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Monday
July 29, 1991

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Monday, July 29, 1991

Presidential Documents

Title 3—

The President

Proclamation 6317 of July 24, 1991

Women's Equality Day, 1991

By the President of the United States of America

A Proclamation

Each August 26 we commemorate the ratification of the 19th Amendment to our Constitution. This Amendment guaranteed for women the right to vote and gave them an equal voice in our Nation's system of self-government. Passed by the Congress in June of 1919, the proposed Amendment was ratified by the Tennessee Legislature on August 18, 1920, and declared part of our Constitution on August 26.

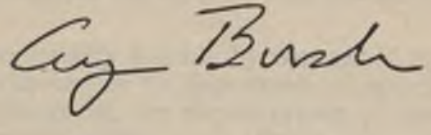
Although the woman's suffrage movement had gained ground in preceding years, and although women already enjoyed the right to vote in some States, the contributions of women during World War I contributed significantly to gathering the force of public opinion behind the proposed 19th Amendment to our Constitution. President Woodrow Wilson noted that the services of women during the war were "of the most signal usefulness and distinction. The war could not have been fought without them, or its sacrifices endured." The achievements of women during that epic conflict underscored not only their desire but also their ability to act as full and equal partners in the life of our country.

Since the adoption of the 19th Amendment, as more and more legal and attitudinal barriers to their advancement have fallen, women have entered positions of leadership and responsibility in virtually every field of endeavor. For example, today women are not only providing support for our Nation's military personnel but also serving as members of the Armed Forces themselves. Through the workplace, through the ballot box, and, as ever, through their families and their communities, women are helping to shape America's future.

The anniversary of the ratification of the 19th Amendment reminds us of our obligation to ensure that every individual has the opportunity to participate fully in the social, political, and economic life of our country. It also underscores the importance of having the right to vote and of faithfully exercising that right, so that this Nation might always be true to the ideals enshrined in our Constitution and Declaration of Independence.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1991, as Women's Equality Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-18043
Filed 7-25-91; 4:14 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12770 of July 25, 1991

Metric Usage in Federal Government Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Metric Conversion Act of 1975, Public Law 94–168 (15 U.S.C. 205a *et seq.*) ("the Metric Conversion Act"), as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 ("the Trade and Competitiveness Act"), and in order to implement the congressional designation of the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, it is hereby ordered as follows:

Section 1. *Coordination by the Department of Commerce.* (a) The Secretary of Commerce ("Secretary") is designated to direct and coordinate efforts by Federal departments and agencies to implement Government metric usage in accordance with section 3 of the Metric Conversion Act (15 U.S.C. 205b), as amended by section 5164(b) of the Trade and Competitiveness Act.

(b) In furtherance of his duties under this order, the Secretary is authorized:

(1) to charter an Interagency Council on Metric Policy ("ICMP"), which will assist the Secretary in coordinating Federal Government-wide implementation of this order. Conflicts and questions regarding implementation of this order shall be resolved by the ICMP. The Secretary may establish such subcommittees and subchairs within this Council as may be necessary to carry out the purposes of this order.

(2) to form such advisory committees representing other interests, including State and local governments and the business community, as may be necessary to achieve the maximum beneficial effects of this order; and

(3) to issue guidelines, to promulgate rules and regulations, and to take such actions as may be necessary to carry out the purposes of this order. Regulations promulgated by the Secretary shall function as policy guidelines for other agencies and departments.

(c) The Secretary shall report to the President annually regarding the progress made in implementing this order. The report shall include:

(1) an assessment of progress made by individual Federal agencies towards implementing the purposes underlying this order;

(2) an assessment of the effect that this order has had on achieving the national goal of establishing the metric system as the preferred system of weights and measures for United States trade and commerce; and

(3) on October 1, 1992, any recommendations which the Secretary may have for additional measures, including proposed legislation, needed to achieve the full economic benefits of metric usage.

Sec. 2. *Department and Agency Responsibilities.* All executive branch departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order. Consistent with this mission, the head of each executive department and agency shall:

(a) use, to the extent economically feasible by September 30, 1992, or by such other date or dates established by the department or agency in consultation with the Secretary of Commerce, the metric system of measurement in Federal Government procurements, grants, and other business-related activi-

ties. Other business-related activities include all use of measurement units in agency programs and functions related to trade, industry, and commerce.

(1) Metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(2) Heads of departments and agencies shall establish an effective process for a policy-level and program-level review of proposed exceptions to metric usage. Appropriate information about exceptions granted shall be included in the agency annual report along with recommendations for actions to enable future metric usage.

(b) seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications. The transition to use of metric units in Government publications should be made as publications are revised on normal schedules or new publications are developed, or as metric publications are required in support of metric usage pursuant to paragraph (a) of this section.

(c) seek the appropriate aid, assistance, and cooperation of other affected parties, including other Federal, State, and local agencies and the private sector, in implementing this order. Appropriate use shall be made of governmental, trade, professional, and private sector metric coordinating groups to secure the maximum benefits of this order through proper communication among affected sectors.

(d) formulate metric transition plans for the department or agency which shall incorporate the requirements of the Metric Conversion Act and this order, and which shall be approved by the department or agency head and be in effect by November 30, 1991. Copies of approved plans shall be forwarded to the Secretary of Commerce. Such metric transition plans shall specify, among other things:

(1) the total scope of the metric transition task for that department or agency, including firm dates for all metric accomplishment milestones for the current and subsequent fiscal year;

(2) plans of the department or agency for specific initiatives to enhance cooperation with industry, especially small business, as it voluntarily converts to the metric system, and with all affected parties in undertaking the requirements of paragraph (a) of this section; and

(3) specific steps and associated schedules through which the department or agency will seek to increase understanding of the metric system through educational information and guidance, and in department or agency publications.

(e) designate a senior-level official as the Metric Executive for the department or agency to assist the head of each executive department or agency in implementing this order. The responsibilities of the Metric Executive shall include, but not be limited to:

(1) acting as the department's or agency's policy-level representative to the ICMP and as a liaison with other government agencies and private sector groups:'

(2) management oversight of department or agency outreach and response to inquiries and questions from affected parties during the transition to metric system usage; and

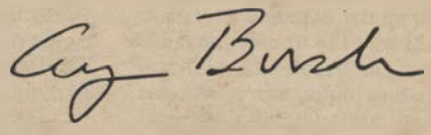
(3) management oversight of preparation of the department's or agency's metric transition plans and progress reports, including the Annual Metric Report required by 15 U.S.C. 205j and OMB Circular A–11.

(4) preparation by June 30, 1992, of an assessment of agency progress and problems, together with recommendations for steps to assure successful implementation of the Metric Conversion Act. The assessment and recommendations shall be approved by the head of the department or agency and provided

to the Secretary by June 30, 1992, for inclusion in the Secretary's October 1, 1992, report on implementation of this order.

Sec. 3. *Application of Resources.* The head of each executive department and agency shall be responsible for implementing and applying the necessary resources to accomplish the goals set forth in the Metric Conversion Act and this order.

Sec. 4. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.



THE WHITE HOUSE,
July 25, 1991.

[FR Doc. 91-18028
Filed 7-25-91; 3:06 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

July 23, 1991.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List and additions to the previous Foreign List. Both Lists were published on April 29, 1991 (56 FR 19547) and effective on May 13, 1991.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective May 13, 1991. Additions and deletions to the OTC List were last published on April 29, 1991 (56 FR 19547). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

The second group of securities represents additions to the Board's Foreign List, which was last published April 29, 1991 (56 FR 19547) and effective May 13, 1991. There are no deletions to the Foreign List. Stocks on the Foreign List are eligible for margin treatment at broker-dealers pursuant to a 1990 amendment to Regulation T (12 CFR part 220). The Foreign List includes those stocks that meet the criteria in Regulation T and are eligible for margin at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and § 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(u) and 220.17(e) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List, and additions to the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

Alcide Corporation
$.01 par common

Algorex Corporation
$.01 par common
Alloy Computer Products, Inc.
$.01 par common
Amoskeag Bank Shares, Inc.
$1.00 par common
Astrocom Corporation
$.10 par common
Barry Blau & Partners, Inc.
$.01 par common
Bell, W. & Co., Inc.
$.10 par common
Biogen, Inc.
$.01 par convertible, exchangeable preferred
CF & I Steel Corporation
$5.00 par common
Citizens Growth Properties
$1.00 par shares of beneficial interest
Coca-Cola Enterprises, Inc.
Warrants (expire 07–10–91)
Duramed Pharmaceutical, Inc.
$.01 par common
E & B Marine Inc.
$.01 par common
Encore Computer Corporation
$.01 par common
Enstar Group, Inc., The
$.50 par common
Famous Restaurants Inc.
$.01 par common
Great American Management & Investment, Inc.
$.01 par common
Healthco International, Inc.
$.05 par common
Helian Health Group Inc.
Warrants (expire 11–22–92)
Hemodynamics Incorporated
$.01 par common
International Broadcast Systems Inc.
Class A, $.001 par common
International Broadcasting Corporation
$.001 par common
Isomet Corporation
$1.00 par common
James Madison Limited
$1.00 par common
John Hanson Bancorp, Inc.
$1.00 par common
Metropolitan Federal Bank, a Savings Bank (Tennessee)
$1.00 par common
Microscience International Corp.
No par common
Midwest Communications Corporation
$.01 par common
Moto Photo, Inc.
$.01 par common
$.01 par cumulative, convertible preferred
Warrants (expire 11–25–91)
Mr. Gasket Company
No par common
Normandy Oil & Gas Company, Inc.
$.001 par common
Plymouth Five Cents Savings Bank (Massachusetts)
$.10 par common
Profit Technology, Inc.
$.01 par common
Prospect Park Financial Corporation
$1.00 par common
Rax Restaurants, Inc.
$.10 par common
Seacoast Savings Bank (New Hampshire)
$1.00 par common
Statewide Bancorp
$2.50 par common
Stratford American Corporation
$.01 par common
Tempest Technologies, Inc.
$.01 par common
Twin Star Productions, Inc.
$.001 par common
U.S. Gold Corporation
$.01 par common
Unigene Laboratories, Inc.
Class A, warrants (expire 08–11–92)
United Dominion Realty Trust
9% convertible subordinated debentures
Valley Federal Savings & Loan Association (California)
No par common
Workingmens Corporation
$.10 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Air Midwest, Inc.
No par common
Angeion Corporation
$.01 par common
Bancorp Hawaii, Inc.
$2.00 par common
Banks of Iowa, Inc.
No par common
Benton Oil and Gas Company
$.01 par common
Bizmart, Inc.
$.01 par common
Calgon Carbon Corporation
$.01 par common
Coca Mines Inc.
$.01 par common
Warrants (expire 05–05–94)
Continental Medical Systems, Inc.
$.01 par common
Critical Care America, Inc.
$.10 par common
Dataphaz, Inc.
$.001 par common
Eastchester Financial Corporation
$.01 par common
First Federal Savings Bank (Alabama)
$.01 par common
Hamilton Oil Corporation
$.25 par common
Inbancshares
No par common
Iowa Southern Inc.
$5.00 par common
Medical Management of America, Inc.
$.01 par common
Mission-Valley Bancorp (California)
No par common
NAPA Valley Bancorp
No par common
National Health Laboratories Incorporated
$.01 par common
Provena Foods, Inc.
No par common
Royalpar Industries, Inc.
$.01 par common
Warrants (expire 01–20–92)
Sensormatic Electronics Corporation
$.01 par common
Sizzler Restaurants International, Inc.
$.01 par common
Southern Bankshares, Inc.
$2.50 par common
Tocor, Inc.
Units (expire 12–31–94)
United Banks of Colorado, Inc
$2.50 par common
Universal Health Service, Inc.
Class B, $.01 par common
US West Newvector Group, Inc.
Class A, no par common
Vitalink Communications Corporation
$.01 par common
Vivigen, Inc.
$.01 par common
Wavetek Corporation
$1.00 par common

Additions to the List of Marginable OTC Stocks

Advanced Promotion Technologies, Inc.
$.01 par common
AES Corporation, The
$.01 par common
Air-Cure Environmental, Inc.
$.001 par common
Alpha 1 Biomedicals, Inc.
$.001 par common
American Biodyne, Inc.
$.01 par common
American Claims Evaluations, Inc.
$.01 par common
American Dental Laser, Inc.
$.01 par common
Applied Extrusion Technologies, Inc.
$.01 par common
Applied Immune Sciences, Inc.
$.01 par common
Artel Communications Corporation
Rights (expire 07–25–91)
Aspen Bancshares, Inc.
$.01 par common
Au Bon Pain Co., Inc.
Class A, $.0001 par common
Aura Systems, Inc.
$.005 par common
Automated Security (Holdings) PLC
American Depositary Receipts
Bertucci's Inc.
$.005 par common
Bio-Technology General Corporation
$.01 par common
Biomedical Dynamics Corporation
No par common

Bioplasty, Inc.
$.01 par common
Brooktree Corporation
No par common
BWIP Holding, Inc.
Class A, $.01 par common
Calloway's Nursery, Inc.
$.01 par common
Cambridge Neuroscience Research, Inc.
$.001 par common
CBL Medical, Inc.
$.01 par common
Warrants (expire 12–21–93)
Centocor, Inc.
Warrants (expire 12–31–94)
7¼% convertible subordinated debentures
Central Indiana Bancorp
No par common
Century Medicorp
No par common
Cephalon, Inc.
$.01 par common
Chemi-Trol Chemical Co.
No par common
Cherokee Inc.
$.01 par common
Chipcom Corporation
$.02 par common
Coastal Healthcare Group, Inc.
$.01 par common
Commerce Clearing House, Inc.
Class B, $1.00 par common
Cor Therapeutics, Inc.
$.0001 par common
Cragin Financial Corporation
$.01 par common
Curative Technologies Inc.
$.01 par common
Danek Group, Inc.
No par common
Devry Inc.
$.01 par common
Envoy Corporation
$1.00 par common
Filene's Basement Corporation
$.01 par common
First Federal Savings Bank of New Smyrna
$1.00 par common
First Team Sports, Inc.
$.01 par common
Fortis Corporation
$.0001 par common
Franklin Savings Bank, FSB (Michigan)
Series A, no par noncumulative convertible preferred
Future Now, Inc., The
No par common
Genelabs Technologies, Inc.
No par common
General Kinetics Incorporated
$.25 par common
Genesis Health Ventures, Inc.
$.02 par common
Glycomed Incorporated
No par common
Hancock Holding Company
$3.33 par common
Hi-Lo Automotive, Inc.
$.01 par common
Homedco Group, Inc.
$.01 par common
Icos Corporation
$.01 par common
Idexx Laboratories, Inc.
$.01 par common
IHOP Corporation
$.01 par common
Immulogic Pharmaceutical Corporation
$.01 par common
Integated Circuit Systems, Inc.
No par common
Integrated Health Services, Inc.
$.001 par common
Interwest Savings Bank
$.20 par common
Isis Pharmaceuticals, Inc.
$.001 par common
Leslie's Poolmart
No par common
Lifetime Hoan Corporation
$.01 par common
Machine Technology, Inc.
No par common
Marrow-Tech Incorporated
Class A, $.01 par common
Marsh Supermarkets, Inc.
Class B, no par common
Medarex, Inc.
$.01 par common
Warrants (expire 06–19–96)
Medimmune, Inc.
$.01 par common
Moorco International Inc.
$.01 par common
Mylex Corporation
$.01 par common
OESI Power Corporation
$.01 par common
Osteotech, Inc.
$.01 par common
Otra Securities Group, Inc.
$.01 par common
Outback Steakhouse, Inc.
$.01 par common
Outlook Graphics Corporation
$.01 par common
OW Office Warehouse, Inc.
$.01 par common
Penril Datacomm Networks, Inc.
$.01 par common
Platinum Technology, Inc.
$.001 par common
Ponder Industries, Inc.
$.01 par common
Pope Resources
Depositary receipts representing limited partnership units
Professional Care, Inc.
$.02 par common
Proteon, Inc.
$.01 par common
Pulse Engineering, Inc.
Class A, $.01 par common
Qual-Med, Inc.
$.01 par common
Quantum Health Resources, Inc.
$.01 par common
Quarterdeck Office Systems, Inc.
$.0001 par common
Rag Shops, Inc.
$.01 par common
Regis Corporation
$.05 par common
Rehabcare Corporation
$.01 par common
Rentrak Corporation
$.001 par common
Riddell Sports Inc.
$.01 par common
Ross Systems, Inc.
No par common
Scigenics, Inc.
Units (expire 05–31–96)
Shoreline Financial Corporation
$1.00 par common
Short, C.A., International, Inc.
No par common
Sierra Semiconductor Corporation
No par common
Sierra Tahoe Bancorp
No par common
Software Spectrum Inc.
$.01 par common
Staodyn, Inc.
Warrants (expire 06–01–93)
State Auto Financial Corporation
No par common
State of the Art, Inc.
No par common
Sunrise Technologies, Inc.
No par common
Tanknology Environmental, Inc.
$.01 par common
TSI Corporation
$.02 par common
U.S. Homecare Corporation
$.01 par common
U.S. Long Distance Corporation
$.01 par common
United American Healthcare Corporation
No par common
Wheatley TXT Corporation
$.01 par common
Wisconsin Central Transportation Corporation
$.01 par common
Xyplex, Inc.
$.01 par common

Additions to the List of Foreign Margin Stocks

Aoyama Trading
¥ 50 par common
Chubu Electric
¥ 500 par common
Daiei, Inc., The
¥ 50 par common
Daiwa Kosho Lease Co., Ltd.
¥ 50 par common
Hihon Unisys, Ltd.
¥ 50 par common
Iwatani International Corp.
¥ 50 par common

Japan Airlines Co., Ltd.
¥ 50 par common
Joshin Denki Co., Ltd.
¥ 50 par common
Komori Corporation
¥ 50 par common
Lion Corporation
¥ 50 par common
Long Term Credit Bank of Japan, Ltd.
¥ 50 par common
Matsushita Electric Industrial Co., Ltd.
¥ 50 par common
Mercian Corporation
¥ 50 par common
Nintendo Co., Ltd.
¥ 50 par common
Sanrio Co., Ltd.
¥ 50 par common
Sega Enterprises, Ltd.
¥ 50 par common
Sumitomo Realty & Development Co., Ltd.
¥ 50 par common
Takasago Thermal Engineering Co.
¥ 50 par common
TDK Corporation
¥ 50 par common
Yurtec Corporation
¥ 50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), July 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–17786 Filed 7–26–91; 8:45 am]

BILLING CODE 6210–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 602 and 603

RIN 3052–AA05

Releasing Information; Privacy Act Regulations; Fees Imposed on Information Requests; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 602 and 603 on June 21, 1991 (56 FR 28474). The final regulations amend 12 CFR parts 602 and 603 relating to the availability of records of the FCA, pursuant to the Freedom of Information Act of 1986 which established a new fee structure governing the fees which can be imposed for providing information under the Freedom of Information Act. The final regulation also implements the provisions of Executive Order 12600 by providing predisclosure notification procedures for confidential commercial information. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 29, 1991.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Ronald H. Erickson, Freedom of Information Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4113,
or
James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4020, TDD (703) 883–4444,

12 U.S.C. 2252(a) (9) and (10).

Dated: July 24, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–17955 Filed 7–26–91; 8:45 am]

BILLING CODE 6705–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements for Insurance and Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule will require any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) to receive approval from the NCUA Board before either purchasing or acquiring certain loans or assuming or receiving an assignment of certain deposits, shares or liabilities of any credit union not insured by the NCUSIF, of any other financial-type institution, or of any successor in interest to either such institution. NCUSIF-insured credit union purchases of real estate loans and student loans to facilitate packaging of a pool for the secondary market, and purchases of certain member loans, are not subject to the approval process. The regulation on purchase of eligible obligations is amended to refer to the new approval process.

DATES: August 28, 1991.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Associate General Counsel, Office of General Counsel, or Martin E. Conrey, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

On November 26, 1990, the NCUA Board published a proposed rule on the purchases of assets and assumption of liabilities from various depository institutions and their successors in interest. (See 55 FR 49059.) The NCUA issued the proposed rule upon becoming aware of several actual and attempted transactions involving the purchase of assets and/or assumption of liabilities of various depository institutions (including failed institutions) by NCUSIF-insured credit unions. Since many institutions fail due to weaknesses in their loan portfolios or a reliance on non-core deposits, NCUA wanted to ensure protection of the NCUSIF through some method of review and approval of these transactions. The proposal was issued with a sixty day comment period.

B. Comments

Seven comments were received. Two were from national credit union trade groups, three from state credit union leagues, one from an FCU and one from a state credit union regulator. Most of the commenters agreed that some form of regulation or other control was necessary to protect credit unions and ultimately the NCUSIF from certain risky transactions. The principal issues raised by the comments are discussed in the section below. The commenters were split on the desirability of the proposed amendment. Three commenters supported the proposal, but offered certain suggestions in response to questions raised in the proposed amendment. Three commenters felt the proposal was overly broad and vague, and also offered certain suggestions to narrow the scope of the proposed rule. One commenter opposed the rule, but suggested certain ideas to improve the proposal.

C. Discussion and Authority

Investment Assets

The proposed rule required that federally insured credit unions receive approval from the NCUA Board before purchasing or acquiring loans or "investment assets" or assuming or receiving an assignment of deposits, shares or liabilities from specified sources. The NCUA solicited comments on whether "investment assets" in the

proposed § 741.4 should be defined, and if so, how it should be defined. The purpose of this solicitation was to tailor the definition to attain a balance between sufficiently reviewing the purchase of assets that present risk to the NCUSIF and those that do not present such risk.

Two commenters felt that "investment assets" should be broadly defined to include all investments permissible for federal credit unions. The NCUA believes that such a definition would be overly broad and present an administrative burden both upon the NCUA and credit unions for many investments that pose little risk to the NCUSIF, such as purchases of United States obligations.

Four commenters stated that "investment assets" should be defined restrictively, by exclusion. One commenter felt that repurchase agreements and transactions with corporate credit unions should be excluded from the definition because of their routine and relatively risk free nature. Another commenter suggested excluding fixed asset acquisitions, which are already subject to a limitation of 5% of shares and retained earnings. 12 CFR 701.36(c). One commenter proposed that participation loans should be excluded from the definition because they are subject to § 701.22 of the NCUA Rules and Regulations. 12 CFR 701.22. However, the NCUA's loan participation rule does not address the same concerns as does this final rule, and for that reason NCUA believes participation loans should not be exempt from the definition of loans for this purpose. A fourth commenter believed that NCUA should narrowly focus on investments posing real risk to the NCUSIF and survey credit unions for a list of available investment opportunities in today's market and then define the term. The NCUA requested precisely this information in the proposed rule and sees no reason to extend the comment period. The exclusion of routine repurchase transactions, corporate credit union transactions and fixed asset acquisitions makes sense. Since the problems experienced to date by the NCUA have concerned loans, the NCUA has decided to limit the scope of the rule to loans alone at this time. If it becomes necessary, the NCUA will reevaluate the need to add other assets requiring approval at some future date. NCUA does note that it will look at substance over form in transactions, and it is the agency's intent that all acquisitions and purchases of lender/borrower obligations are intended to be included in the definition of "loan" for purposes of this regulation.

Three commenters suggested a threshold amount that a credit union could acquire before the application requirement was triggered. One of these commenters suggested the threshold be set at 1% of unimpaired capital and surplus for aggregate purchases of loans from a single liquidating seller in addition to the 5% of unimpaired capital and surplus limitation on the aggregate of the unpaid balances of eligible obligations purchased under the existing § 701.23 of the NCUA Rules and Regulations. 12 CFR 701.23. Another commenter suggested that the threshold amount be set at 5% of the acquiring credit union's assets before NCUA approval was required. The third commenter suggested that a floor limit based upon an unstated portion of the purchasing credit union's reserves, under which approval is not required, be established. The NCUA believes that a threshold concept would not meet the objectives of the regulation. If an amount of loans equalling 1% or 5% or any other fixed percentage of a credit union's shares or assets were of poor investment quality, illiquid or of declining value, such losses could pose a threat of instability to the credit union and of loss to the NCUSIF. The purpose of the regulation is to protect the safety and soundness of credit unions and the integrity of the NCUSIF. Therefore, the threshold concept has not been adopted.

Student Loan/Real Estate Loan/ Member Loan

NCUA solicited comments on whether the exception of federal credit union (FCU) eligible obligation transactions set forth in the proposed regulation involving student loans and real estate secured loans pursuant to § 701.23(b) of the NCUA Rules and Regulations should be extended to federally insured state chartered credit unions (FISCUs). 12 CFR 701.23(b). NCUA review indicates that these transactions are routine, such assets are subject to industry standards protecting safety and soundness and, often, the window of opportunity to consummate such transactions is limited and FCUs would be hampered competitively by agency review. Five of the commenters wholeheartedly endorsed the extension of the exemption to FISCUs. The NCUA Board has adopted this extension in the final rule.

Two of the commenters also strongly endorsed the exemption of the purchase of member loans under § 701.23(b)(1)(i) from the coverage under the final rule. Their reasoning is that if the purchase is nothing more than a loan of the credit union's member that the credit union is empowered to grant, no unusual risk is presented to either the safety and soundness of the acquiring credit union or to the NCUSIF. Finding this approach well reasoned and sound, the final rule extends the exemption to the purchase of eligible obligation member loans.

One of these commenters also requested an extension of the eligible obligation exemption to permit credit unions to acquire whole loans secured by real estate as eligible obligations without the conditions that such purchases be on an ongoing basis by the credit union to facilitate the packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. Such a comment is outside of the scope of the final rule. NCUA notes that it recently considered such an extension of the eligible obligation regulation. 55 FR 1827 at 1829 (January 19, 1990). However, the NCUA Board concluded such a change was not necessary. 56 FR 15034 at 15036 (April 15, 1991).

Information regarding specific powers of FISCUs that FCUs do not have, that might be affected by the proposed regulation, was also solicited. No information on this issue was received.

The NCUA also solicited comments on other methods of tailoring the proposed regulation to achieve its purposes without overly burdening credit unions. One commenter suggested that rollovers of retirement accounts be exempt from the application and approval process of the final rule due to their routine nature. Another commenter suggested that a credit union's perfection of the security interest in the form of a share or other deposit account in another financial institution should also be exempt from coverage of the final rule. Given the routine nature of these transactions, and the lack of risk to the NCUSIF, an exception has been provided in the final rule for both.

Extending Coverage of Rule

The proposed rule covered certain acquisitions from uninsured credit unions, other depository institutions, their successors in interest and insured credit unions that are not in liquidation. NCUA solicited comments on whether the rule should be extended to cover purchases from entities other than credit unions or depository institutions. Three commenters felt that the number of entities covered by the rule should not be extended at this time because of potential interference with the business decisions of a credit union and insufficient information regarding transactions between such entities and credit unions which present safety and

soundness concerns as well as risk to the NCUSIF. One commenter proposed that the number of entities covered by the rule should be extended to other entities from which credit unions could purchase or acquire substandard loans. NCUA staff also feels strongly that the coverage should be broadened to include mortgage banks, consumer finance companies, insurance companies, loan brokers and other loan sellers or liability traders. Therefore, the final rule applies to "financial-type" institutions. Depository institutions as well as the types of institutions mentioned above defined as financial-type institutions in § 741.4(a)(2) of the final rule.

One commenter questioned the coverage of noninsured credit unions and NCUSIF-insured credit unions not in liquidation, but not NCUSIF-insured credit unions in liquidation. Upon further reflection, the NCUA believes that the NCUSIF is not exposed to more risk when a federally insured credit union is purchasing or acquiring loans from other NCUSIF-insured credit unions or assuming or receiving shares, deposits or liabilities from other NCUSIF-insured credit unions. Likewise, such exchanges should not unduly affect the safety and soundness of NCUSIF-insured credit unions because of regulations applicable to these credit unions which are examined for and enforced by appropriate regulators. Because of this, the NCUA has decided to drop transactions between NCUSIF-insured credit unions from the coverage of this rule.

Implementation

Four commenters requested guidance be provided on the application process. Section 205(c) of the FCU Act provides factors for the NCUA Board to consider in determining whether to grant or withhold approval or consent for transactions covered by the final rule. These factors are: (1) The history, financial condition, and management policies of the credit union; (2) the adequacy of the credit union's reserves; (3) the economic advisability of the transaction; (4) the general character and fitness of the credit union's management; (5) the convenience and needs of the members to be served by the credit union; and (6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident and productive purposes. 12 U.S.C. 1785(c). In particular, the NCUA Board believes that the market volatility and liquidity of the loans or deposits to be acquired and the potential risk to the NCUSIF will be determining considerations. As stated in the supplementary information section of the proposed rule, the NCUA might review any such dealings for thorough due diligence investigation, fair negotiation (absence of conflicts of interest and evidence of arm's length dealing), proper contract subject matter, reasonable pricing (to protect against waste of corporate assets), and adequate and prudent documentation and closing methods of the transaction by the purchasing or assuming insured credit union before consummation. Furthermore, the NCUA might review such a transaction for any potential effects upon the credit union's membership, liquidity, profitability, management and support capabilities, quality controls, concentrations of credit, diversity of portfolio investments, risk weighted assets, and capital ratio. One commenter questioned whether the factors NCUA will evaluate by are realistic.

NCUA has years of expertise in evaluating credit union transactions and believes that it has ample ability and expertise to evaluate the applications required by the final rule. Four of the commenters requested specific application forms, guidelines or written policies on the application process required by the final rule. NCUA staff will review the need for such documentation, and, if deemed necessary, such documentation will be released to credit unions.

Four commenters requested information on a timetable for agency action on required applications, expressing concern about the potential for lost business opportunities due to the application process. As each application will be considered on its own merits, the NCUA Board cannot release a generic timetable. However, the NCUA Board fully intends to review all applications as quickly as a thorough evaluation will allow. One commenter suggested that an expedited review process be available in order that business opportunities would not be lost by the application and review process. Credit unions are welcome to bring such considerations to the NCUA Board's attention in the application, which the Board will then attempt to make every reasonable effort to consider.

Two commenters requested that the authority to approve applications be delegated to NCUA staff. One commenter preferred the Director of Examination and Insurance while the other preferred the Regional Directors. Since the number of applications is estimated to be quite small, the NCUA Board has decided to postpone any decision regarding delegation at this time.

As noted in the Supplementary Information section of the proposed regulation, NCUA does not intend to change field of membership policy or requirements by virtue of this regulation In addition, as in the proposed rule, §§ 741.3 and 741.4 are combined in the final rule as § 741.3 with no substantive changes. The sections are combined so a new § 741.4 can be added without renumbering all subsequent sections of part 741.

c. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Based on information received by the NCUA, few credit unions of any size will be affected by the final rule. In the most active state NCUA has knowledge of, only four transactions that would be covered by the proposed rule have occurred in two years. Various Regional Offices of the NCUA have reported interest, but no activity, on the part of NCUSIF-insured credit unions for transactions that would be subject to the rule. The Resolution Trust Corporation has informed the NCUA that it is unaware of any transactions involving NCUSIF-insured credit unions. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act requirements do not apply to information collection requests submitted to nine or fewer persons. The information we have at present, including comments to the proposed rule, indicates that very few applications will be received by the Board. One commenter stated that if purchases of member loans were exempted from coverage of the rule that nine or fewer applications would be received each year. This change is adopted by NCUA in the final rule. NCUA, at this time, expects no more than nine applications per year. Therefore, the Board has determined that the requirements of the Paperwork Reduction Act do not apply to the final rule.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The authority of the NCUA to regulate NCUSIF-insured credit unions under the above-referenced sections of the Federal Credit Union Act is clear. Furthermore, the protection of NCUSIF-insured institutions and the NCUSIF itself are concerns of national scope.

Comments were solicited on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order. One commenter suggested allowing the state regulator to determine the permissibility of transactions entered into by FISCUs. The NCUA Board disagrees with this approach, as it permits no participation in the decision by the NCUA and the transactions involve potential risk to the NCUSIF. No other comments were received. In light of this, and the small number of applications expected, the NCUA Board determines that the final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, in considering applications from state-chartered NCUSIF insured credit unions, the NCUA Board will lend substantial weight to recommendations from state regulators.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 18, 1991.

Becky Baker,

Secretary to the Board.

For the reasons set forth in the preamble, 12 CFR parts 701 and 741 are amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.23, paragraph (b)(2) is revised to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(b) * * *

(2) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchasers office; and

(iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written approval required by § 741.4 of this chapter is obtained before consummation of such purchase.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.11 is also authorized by 31 U.S.C. 3717.

2. Section 741.3 is revised to read as follows:

§ 741.3 Minimum loan policy and appraisal requirements.

Any credit union which is insured pursuant to title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

3. Section 741.4 is revised to read as follows:

§ 741.4 Purchase of assets and assumption of liabilities.

(a) Any credit union insured pursuant to title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares or liabilities from:

(1) Any credit union that is not insured pursuant to title II of the Act,

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers and other loan sellers or liability traders), or

(3) Any successor in interest to any institution identified in paragraphs (a) or (b) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions; or

(2) assumptions or receipt of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an NCUSIF-insured credit union perfects a security interest in connection with an extension of credit to any member.

[FR Doc. 91–17820 Filed 7–26–91; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1204 by revising subpart 14, "Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government." This revision updates the procedures and regulations needed to provide for the orderly and controlled use of NASA research facilities that have limited availability for aircraft owned and operated by and for private citizens or companies. This revision also reflects changes at the Wallops Flight Facility; hours of operations; and the facilities available. This rule also

modifies the regulations pertaining to the Shuttle Landing Facility at the Kennedy Space Center in Florida and reflects changes to the facility.

These procedures and requirements involve the use of public property and will be applied in agreements entered into by NASA. However, the notice and public procedures of 5 U.S.C. 553 were not followed since these procedures and requirements are determined to be exempt under 5 U.S.C. 553(a)(2) "as a matter relating to Agency management or personnel or to public property, loans, grants, benefits, or contracts."

EFFECTIVE DATES: July 29, 1991.

ADDRESSES: Director, Aircraft Management Office, Code NIF, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: G.T. McCarthy, 202–453–1991.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contracts, Government employees, Government procurement, Grant programs: Science and technology, Intergovernmental relations, Labor unions, Security measures, Small business, Real estate.

PART 1240—ADMINISTRATIVE AUTHORITY AND POLICY

14 CFR part 1204 is amended by revising subpart 14 to read as follows:

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

Sec.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

§ 1204.1400 Scope.

This subpart establishes the responsibility and sets forth the conditions and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government.

§ 1204.1401 Definitions.

For the purpose of this subpart, the following definitions apply:

(a) *NASA Airfield Facility.* Those aeronautical facilities owned and operated by NASA that consist of the following:

(1) *Shuttle Landing Facility.* The aeronautical facility which is a part of the John F. Kennedy Space Center (KSC), Kennedy Space Center, Florida, and is located at 80° 41′ west longitude and 28° 37′ north latitude.

(2) *Wallops Airport.* The aeronautical facility which is part of the Wallops Flight Facility (WFF), Wallops Island, VA, and is located at 75° 28′ west longitude and 37° 56′ north latitude in the general vicinity of Chincoteague, Virginia.

(b) *Aircraft not Operated for the Benefit of the Federal Government.* Aircraft which are not owned or leased by the United States Government or aircraft carrying crew members or passengers who do not have official business requiring the use of a NASA airfield facility in the particular circumstance in question.

(c) *Official Business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel or organizations at or near a NASA facility. The use of a NASA airfield facility by transient aircraft to petition for U.S. Government business or to obtain clearance, servicing, or other items pertaining to itinerant operations is not considered official business.

(d) *User.* An individual partnership or corporation owning, operating, or using an aircraft not operated for the benefit of the Federal Government in whose name permission to use a NASA airfield facility is to be requested and granted.

(e) *Hold Harmless Agreement.* An agreement executed by the user by which the user acknowledges awareness of the conditions of the permission to use a NASA airfield facility, assumes any risks connected therewith, and releases the U.S. Government from all liability incurred by the use of such facility.

(f) *Use Permit.* The written permission signed by the authorized approving official to land, take off, and otherwise use a NASA airfield facility. Such use permit may be issued for single or multiple occasions. The specific terms of the use permit and the provisions of this subpart govern the use which may be made of the airport by aircraft not operated for the benefit for the Federal Government.

(g) *Certificate of Insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see § 1204.1404(b)).

§ 1204.1402 Policy.

(a) NASA airfields are not normally available to the general public; hence, any use of airfield facilities by aircraft not operated for the benefit of the Federal Government shall be within the sole discretion of the approving authorities.

(b) Except in the event of a declared in-flight emergency (see § 1204.1406) or as otherwise determined by an approving authority, aircraft not operated for the benefit of the Federal Government are not permitted to land or otherwise use NASA airfield facilities.

(c) Any use of a NASA airfield facility by aircraft not operated for the benefit of the Federal Government shall be free of charge and no consideration (monetary or otherwise) shall be exacted or received by NASA for such use. However, each user, as a condition of receiving permission to use such airfield facility, shall agree to become familiar with the physical condition of the airfield; abide by the conditions placed upon such use; subject the aircraft, the user, and those accompanying the user to any requirements imposed by NASA in the interest of security and safety while the aircraft or persons are on a NASA facility; use the facilities entirely at the user's own risk; hold the Federal Government harmless with respect to any and all liabilities which may arise as a result of the use of the facilities; and carry insurance covering liability to others in amounts not less than those listed in the Hold Harmless Agreement.

(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

(e) In no event, except for an in-flight emergency (see § 1204.1406), will permission to use NASA airfield facilities be granted to an aircraft arriving directly from, or destined for, any location outside the continental United States unless previously arranged and approved by the authorized approving official.

(f) Permission to use NASA airfields may be granted only to those users having the legal capacity to contract and whose aircraft are in full compliance with applicable Federal Aviation Administration (FAA) or other cognizant regulatory agency requirements.

(g) Permission to use NASA airfields, except in connection with a declared in-flight emergency, will consist only of the right to land, park an aircraft, and subsequently take off. NASA is not equipped to provide any other services such as maintenance or fuel and such services will not be provided except following an in-flight emergency.

§ 1204.1403 Available airport facilities.

The facilities available vary at each NASA Installation having an airfield. The airport facilities available are:

(a) *Shuttle Landing Facility*—(1) *Runways.* Runway 15–33 is 15,000 feet long and 300 feet wide with 1,000-foot overruns. The first 3,500 feet at each end of the runway have been modified for smoothness. The center 8,000 feet of the runway is grooved for improved braking under wet conditions.

(2) *Parking Areas and Hangar Space.* No hangar space is available. Limited available concrete parking ramp space makes precoordination necessary.

(3) *Control Tower.* The control tower is normally in operation from 0800 to 1600 local time, Monday through Friday. Additional hours of operation are filed with the St. Petersburg Flight Service Station (FSS). The tower may be contacted on 128.55 MHz or 284.0 MHz. FAA regulations pertaining to the operation of aircraft at airports with an operating control tower (§ 91.87 of this title) will apply. When the tower is not in operation, the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* A Microwave Scanning Beam Landing System (MSBLS) and a Tactical Airborne Navigation System (TACAN) are installed at the Facility. There are two published TACAN approaches and an approved and published nondirectional beacon (NDB) approach available from Titusville. Runway approach lighting (similar to Category II ALSF–2) and edge lights are available by prior arrangement.

(5) *Hazards.* There are towers and buildings south, southeast, and northeast of the facility as high as 550 feet that could pose hazards to air navigation. All are marked with obstruction lights.

(6) *Emergency Equipment.* Aircraft Rescue and Fire-fighting (ARFF) equipment will be provided in accordance with 14 CFR part 139.

(b) *Wallops Airport*—(1) *Runways.* There are three hard surfaced runways in satisfactory condition. The runways and taxiways are concrete and/or asphalt. Runway 10–28 is 8,000 feet long, 200 feet wide with maximum wheel load of 57,500 pounds; runway 04–22 is 8,750 feet long, 150 feet wide with maximum wheel load of 57,500 pounds; and runway 17–35 is 4,820 feet long, 150 feet wide with maximum wheel load of 14,700 pounds.

(2) *Parking Areas and Hangar Space.* No hangar space is available. However, limited concrete parking ramp space is available as directed by the control tower.

(3) *Control Tower.* This control tower is normally in operation from 0630 to 1830 local time, Monday through Friday, excluding Federal holidays. The tower may be contacted on 126.5 MHz or 394.3 MHz. When the tower is in operation, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation, all aircraft operations will be handled by Wallops UNICOM on the tower frequency, and FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply. In addition to Federal Aviation Regulations (FAR's) (s 91 of this title), Wallops requires that pilots obtain clearances from the Wallops UNICOM before landings, takeoffs, and taxiing. Civil aircraft operations are normally confined to daylight hours.

(4) *Navigation Aids.* All runways, 04–22, 10–28, and 17–35 are lighted. Both active taxiways, parallels 04–22 and 10–28, are lighted. Airfield lighting is available upon request. All runway approaches are equipped with operating precision approach path indicator (PAPI) systems and are available on request. All airfield obstructions are equipped with red obstruction lights.

(5) *Hazards.* Numerous towers in airport vicinity up to 241 feet above ground level. Existing tree obstructions are located 1500 feet west of runway 10 threshold. High shore bird population exists in the Wallops area. Deer occasionally venture across runways. Light-controlled traffic crossovers are in existence. Potential radio frequency (RF) hazards exist from tracking radars. Hazards involving aircraft and rocket launch operations exist when Restricted Area R–6604 is active.

(6) *Emergency Equipment.* Aircraft rescue and fire-fighting equipment is normally available on a continuous basis.

(c) *Other Facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(d) *Status of Facilities.* Changes to the status of the KSC and WFF facilities will be published in appropriate current FAA aeronautical publications.

§ 1204.1404 Requests for use of NASA airfield facilities.

(a) Request for use of a NASA airfield, whether on a one time or recurring basis, must be in writing and addressed to the appropriate NASA facility, namely:

(1) *Shuttle Landing Facility.* Director of Center Support Operations, John F. Kennedy Space Center, Kennedy Space Center, Florida 32899.

(2) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, Virginia 23337.

(b) Such requests will:

(1) Fully identify the prospective user and aircraft.

(2) State the purpose of the proposed use and the reason why the use of the NASA airfield is proposed rather than a commercial airport.

(3) Indicate the expected annual use, to include number and approximate date(s) and time(s) of such proposed use.

(4) State that the prospective user is prepared to fully comply with the terms of this Subpart 14 and the use permit which may be issued.

(c) Upon receipt of the written request for permission to use the airport, the NASA official designated by each facility will request additional information, if necessary, and forward both this regulation and the required Hold Harmless Agreement for execution by the requestor or forward, where appropriate, a denial of the request.

(d) The signed original of the Hold Harmless Agreement shall be returned to the designated NASA official, and a copy retained in the aircraft at all times. Such copy shall be exhibited upon proper demand by any designated NASA official.

(e) At the same time that the prospective user returns the executed original of the Hold Harmless Agreement, the user shall forward to the

designated NASA official the required Certificate of Insurance and waiver of rights to subrogation. Such certificate shall evidence that during any period for which a permit to use is being requested, the prospective user has in force a policy of insurance covering liability in amounts not less than those listed in the Hold Harmless Agreement.

(f) When the documents (in form and substance) required by paragraphs b through e of this section have been received, they will be forwarded with a proposed use permit to the approving authority for action.

(g) The designated NASA official will forward the executed use permit or notification of denial thereof to the prospective user after the approving authority has acted.

§ 1204.1405 Approving authority.

The authority to establish limitations and procedures for use of a NASA airfield, as well as the authority to approve or disapprove the use of the NASA airfield facilities subject to the terms and conditions of this subpart and any supplemental rules or procedures established for the facility is vested in:

(a) *Shuttle Landing Facility.* Director of Center Support Operations, Kennedy Space Center, NASA.

(b) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, NASA.

§ 1204.1406 Procedures in the event of a declared in-flight emergency.

(a) Any aircraft involved in a declared in-flight emergency that endangers the safety of its passengers and aircraft may land at a NASA airfield. In such situations, the requirements for this subpart for advance authorizations, do not apply.

(b) NASA personnel may use any method or means to clear the aircraft or wreckage from the runway after a landing following an in-flight emergency. Care will be taken to preclude unnecessary damage in so doing. However, the runway will be cleared as soon as possible for appropriate use.

(c) The emergency user will be billed for all costs to the Government that result from the emergency landing. No landing fee will be charged, but the charges will include the labor, materials, parts, use of equipment, and tools required for any service rendered under these circumstances.

(d) In addition to any report required by the Federal Aviation Administration, a complete report covering the landing and the emergency will be filed with the airfield manager by the pilot or, if the pilot is not available, any other crew member or passenger.

(e) Before an aircraft which has made an emergency landing is permitted to take off (if the aircraft can and is to be flown out) the owner or operator thereof shall make arrangements acceptable to the approving authority to pay any charges assessed for services rendered and execute a Hold Harmless Agreement. The owner or operator may also be required to furnish a certificate of insurance, as provided in § 1204.1404, covering such takeoff.

§ 1204.1407 Procedure in the event of an unauthorized use.

Any aircraft not operated for benefit of the Federal Government which lands at a NASA airfield facility without obtaining prior permission from the approving authority, except in a bona fide emergency, is in violation of this subpart. Such aircraft will experience delays while authorization for departure is obtained pursuant to this subpart and may, contrary to the other provisions of this subpart, be required, at the discretion of the approving authority, to pay a user fee of not less than $100. Before the aircraft is permitted to depart, the approving authority will require full compliance with this Subpart 1204.14, including the filing of a complete report explaining the reasons for the unauthorized landing. Violators could also be subject to legal liability for unauthorized use. When it appears that the violation of this subpart was deliberate or is a repeated violation, the matter will be referred to the Aircraft Management Office, NASA Headquarters, which will then grant any departure authorization.

Richard H. Truly,

Administrator.

[FR Doc. 91-17890 Filed 7-26-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket No. 910642-1142]

Special Services and Studies by the Bureau of the Census (Age Search and Citizenship Service)

AGENCY: Census, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule implementing a technical amendment to announce a change of address for the Bureau of the Census age search and citizenship service operations from Pittsburg, Kansas, to Jeffersonville, Indiana.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph S. Harris, Chief, Data Preparation Division, 1201 East 10th Street, Jeffersonville, Indiana 47132, telephone (812) 288-3344.

SUPPLEMENTARY INFORMATION: As a service to the public, the Bureau of the Census conducts searches of past decennial census records to provide individuals with proof of their or their ancestors' age, relationships, citizenship, and other personal data, upon request and payment of a fee for the cost of the service. This service is supported entirely by user fees. The function is being relocated from an office in Pittsburg, Kansas, to the Census Bureau processing office in Jeffersonville, Indiana, in order to contain costs and to ensure effective, efficient continuation of the service. Operations in Pittsburg, Kansas will cease on August 1, 1991.

Classification

This final rule, technical amendment, is issued under part 50, § 50.1, paragraph (c). The Bureau of the Census determines for good cause that this technical amendment makes no substantive changes other than a change in the location of the age search and citizenship service function, therefore, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment, and there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule has been determined not to be a major rule under Executive Order 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no regulatory impact.

List of Subjects in 15 CFR Part 50

Census data.

For reasons set out in the preamble, 15 CFR part 50 is amended as follows:

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293 as amended; 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended, sec. 1, 49 Stat. 292, sec. 8, 60 Stat. 1013, as amended, 15 U.S.C. 192, 189a, 13 U.S.C. 8.

2. Section 50.1 is amended by revising paragraph (c) to read as follows:

§ 50.1 General.

* * * * *

(c) Requests for age search and citizenship service should be addressed to the Personal Census Search Unit, Data Preparation Division, Bureau of the Census, P.O. Box 1545, Jeffersonville, Indiana 47131. Application forms may be obtained at Department of Commerce field offices or Social Security offices or by writing to the Jeffersonville, Indiana office.

Dated: July 2, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91-17592 Filed 7-26-91; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 85N-0331]

Cardiovascular Devices; Extension of Effective Date of Requirement for Premarket Approval; Replacement Heart Valve Allograft

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of extension of applicability of a final rule.

SUMMARY: The Food and Drug Administration (FDA) is extending the effective date of a notice which was issued on June 26, 1991, and which clarified that replacement heart valve allograft devices are subject to a final rule issued by FDA on May 13, 1987. The May 1987 rule required the filing of a premarket approval application (PMA) for all preamendment replacement heart valves and those substantially equivalent to replacement heart valves. The June 1991 notice provided that if a PMA for a replacement heart valve allograft was not approved on or before August 26, 1991, the device would violate the Federal Food, Drug, and Cosmetic Act (the act) unless it were the subject of an approved investigational device exemption (IDE). The current notice extends the effective date until November 25, 1991.

EFFECTIVE DATES: FDA is extending the effective date for an approved PMA or IDE until November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth Palmer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1200.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1991 (56 FR 29177), FDA stated that the May 13, 1987 (52 FR 18162) regulation requiring the filing, under section 515(b) of the act (21 U.S.C. 360e(b)), of a PMA for replacement heart valves, expressly covers replacement heart valve allograft devices. In the June 1991 notice, FDA emphasized that the regulation requiring premarket approval or investigational device exemptions for replacement heart valve allografts, was necessary to ensure protection of the public health for the use of a device that can raise significant safety concerns. FDA stated that prior to premarket approval the availability of human heart valves need not be diminished. Distribution of the device could continue under an approved IDE, which would ensure that sponsors received informed consent from human heart valve recipients while requiring the systematic collection of data. The notice advised all persons who currently sponsor or intend to sponsor clinical investigations involving the device to submit an IDE application to FDA no later than July 26, 1991.

On July 17, 1991, FDA received a petition on behalf of six nonprofit tissue banks that process human heart valve allografts requesting a stay of the effective date of its action for a period of 30 months, until February 26, 1994. The petition recited a number of legal and policy grounds for the requested relief, but explained that assurance of availability of heart valve allografts was its principal reason. Petitioners argued in part that the last step to an operational IDE, that of IRB approval, could not be obtained within the 60-day time period allowed under the June 1991 notice. Similar concerns about the difficulty of obtaining IRB approval within the 60-day timeframe were raised in a July 15, 1991, letter to the agency by attorneys for Cryolife, Cardiovascular, Inc., a laboratory that specializes in the low temperature preparation of human heart valves for transplantation.

While mindful of the need to have approved PMA's or IDE's in effect promptly to protect the public health in the use of these devices, FDA recognizes the concerns raised by allograft suppliers that there may be difficulty in obtaining IRB approval by August 26, 1991. FDA is therefore extending the August 26, 1991, date until November 25, 1991. FDA emphasizes that sponsors should submit their PMA or IDE applications and secure IRB approval as soon as practicable in advance of that date.

FDA is continuing to evaluate the remainder of the arguments presented by the petition and will respond fully at a later date.

Dated: July 24, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-17898 Filed 7-26-91; 8:45 a.m.]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8341]

RIN 1545-A086

Deposits of Employment Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8341, which was published in the Federal Register on April 2, 1991 (56 FR 13400). The final regulations relate to the deposit of Federal employment taxes (including railroad retirement taxes).

EFFECTIVE DATE: April 2, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, (202) 566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction concern the manner in which an employer computes its deposit liability at the close of a specified deposit period. The regulations also reflect the addition of section 6302(g) to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, 103 Stat. 2106, accelerating the deposit due date of employment taxes of $100,000 or more, and its amendment by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388. Guidance concerning the acceleration provisions was previously issued in Notice 90-37, 1990-1, C.B. 343, dated May 21, 1990.

Need for Correction

As published, T.D. 8341 contains an omission which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8341), which was the subject of FR Doc. 91–7601, is corrected as follows:

§ 31.6302 [Corrected]

1. On page 13402, column 1, the last line of § 31.6302(c)–1(a)(1)(ii)(*a*) appearing before "Example 1:", the language "any) for that month." is corrected to read "any) for that month. However, this paragraph (a)(1)(ii)(*a*) shall not apply if the employer was required to make a deposit of taxes pursuant to paragraph (a)(1)(ii)(*b*) of this section with respect to an eighth-month period which occurred during the calendar month."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–17949 Filed 7–26–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 90–064a]

RIN–2115–AD71

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard has been petitioned by the Federal Highway Administration, the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works to permanently amend the regulations governing operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, at Alexandria, Virginia. As part of the rulemaking process, the Coast Guard is considering several alternative opening schedules as well as the schedule proposed by the petitioners. This temporary rule is being issued to evaluate the impacts of one of the alternatives under consideration on both marine and highway traffic during the period.

DATES: This temporary rule is effective from July 31, 1991, through September 28, 1991, unless sooner terminated. Comments must be received on or before September 13, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804–398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and Capt. M. K. Cain, Project Attorney.

Discussion of Temporary Rule

This temporary rule is being issued to evaluate one of the alternative opening schedules being considered by the Coast Guard in response to a request from the Federal Highway Administration, the Virginia and Maryland Departments of Transportation, and the District of Columbia Department of Public Works, to permanently change the regulations for the Woodrow Wilson Memorial Bridge by further restricting the hours during which the bridge may open for vessel traffic. This alternative has been selected for evaluation because it is one of several considered to strike a reasonable balance between the needs of both marine and vehicular traffic using this bridge.

This temporary rule is for evaluation purposes only and will be effective for a 60 day period beginning on July 31, 1991. The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. Data will be collected during the period to document the time and duration of draw openings and length of any resulting vehicle backups. If this rule results in an unforeseen disruption of traffic it may be withdrawn sooner than 60 days.

The Woodrow Wilson Bridge operated under temporary rules from August 2, 1990, through May 31, 1991, to facilitate repairs to the bridge. Repairs were completed by May 31, 1991. Normally, operation of the bridge would revert to the permanent rule in 33 CFR 117.255. However, it is apparent that these will not provide a satisfactory balance between the needs of today's vehicular traffic and the needs of vessels. Therefore, the Coast Guard issued a temporary deviation from the permanent rules under the provisions of 33 CFR 117.43. That temporary rule with request for comments was issued to evaluate one of the alternative opening schedules being considered for a permanent change in the regulations. The rule was published in the **Federal Register** (56 FR 25369) on June 4, 1991. It was effective from June 1, 1991, through July 30, 1991. Comments were accepted through July 15, 1991.

Before any permanent changes are made in the operating rule for the Woodrow Wilson Bridge, a notice of proposed rulemaking will be published and comments on all alternatives under consideration will be solicited. Comments are also invited concerning any particular problems experienced with this temporary schedule. These comments will be evaluated and modifications may be made or an alternate temporary schedule of openings may be established for the purpose of further evaluation. All comments received will also be considered along with those received in connection with the permanent operating schedule rule change being considered. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rules. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Since this temporary rule serves the immediate interests of highway traffic with no expected significant adverse impacts on marine traffic, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Regulatory Evaluation

This temporary rule is considered to be not major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial affect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as " small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant preparation of a Federal Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.255 is temporarily amended by revising paragraph (a)(2) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations).

§ 117.255 Potomac River.

(a) * * *

(2) Need not open:

(i) Except as provided in paragraph (a)(1) of this section, for the passage of any vessel unless at least 2 hours advance notice is given to the bridgetender at (202) 727–5522.

(ii) For the passage of any vessel from 4 a.m. to 9 a.m. and from 2 p.m. to 7 p.m., on Monday through Fridays other than Federal holidays.

(iii) For the passage of any vessel from 2 p.m. to 7 p.m. on Saturdays, Sundays, and Federal holidays.

(iv) For the passage of recreational vessels from 4 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, on Mondays through Fridays other than Federal holidays.

(v) For the passage of recreational vessels from 6 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, and one opening at 9 p.m., if requested, on Saturdays, Sundays, and Federal holidays.

(vi) This temporary rule is effective from July 31, 1991, through September 28, 1991.

* * * * *

Dated: July 9, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91–17901 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 127 and 154; 46 CFR Parts 25, 32, 34, 50, 52, 53, 54, 55, 56, 57, 58, 59, 71, 76, 91, 92, 95, 107, 108, 150, 153, 162, 163, 169, 170, 174, 182, 189, 190, and 193

[CGD 88–032]

RIN 2115–AD05

Incorporation and Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations to adopt industry standards and specifications. These changes eliminate the submission of technical information for affected components and reduce the overall cost and burden in staff hours and paperwork for both industry and the government, while providing a better method for ensuring that the affected components comply with Coast Guard regulations.

DATES: This rule is effective on August 28, 1991. The Director of the Federal Register approves as of August 28, 1991, the incorporation by reference of certain publications listed in the regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen R. Irvin, Office of Marine Safety, Security and Environmental Protection, (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Stephen R. Irvin, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 17, 1990, the Coast Guard published a notice of proposed rulemaking entitled "Incorporation and Adoption of Industry Standards" in the **Federal Register** (55 FR 33824). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This rulemaking incorporates industry developed standards by reference. Since 1968 the Marine Safety Program has adopted over 250 industry consensus standards into the regulations. This action has lessened the regulatory burden on industry as well as saved many pages of regulations. This rulemaking also adopts international standards, allowing the United States to be more competitive in the world market.

The Coast Guard has taken a very pro-active stance in promoting incorporation of industry standards in the spirit of the Office of Management and Budget's Circular 119, "Federal Participation in the Development and Use of Voluntary Standards." This process has mutual benefit for both industry and government. Government costs are reduced in the areas of people intensive activities needed to review and approve equipment and the time expended by field inspectors to verify compliance with the standards. Industry no longer needs to submit plans to the government for review.

The regulations in this rulemaking will have no effect on installations and equipment already accepted by Coast Guard marine inspectors and maintained in good and serviceable condition. However, when a piece of equipment, system component, or whole system is replaced, the regulations in this rulemaking, as well as other regulations promulgated after the original date of acceptance which relates to the equipment or system, would be applicable to the replacement.

The standards being newly incorporated or updated by this rulemaking are:

Title

ABS Rules for Classing and Building Steel Vessels, 1989.

API No.

RP 14C Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms.
RP 53 Recommended Practice for Blowout Protection Equipment Systems.

ANSI No.

B16.5–88 Steel Pipe Flanges and Flanged Fittings.
B31.5–87 Refrigeration Piping.

ASME No.

Sec. I Boiler and Pressure Vessel (B&PV) Code, Power Boilers.
Sec. III B&PV Code, Division 1, Construction of Nuclear Power Plant Components.
Sec. IV B&PV Code, Heating Boilers.
Sec. VII B&PV Code, Recommended Guidelines for the Care of Power Boilers.
Sec. VIII B&PV Code, Division 1, Pressure Vessels.
Sec. IX B&PV Code, Welding and Brazing Qualifications.

ASTM No.

A–193–90 Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service.
B–122–85 Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver) and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar.
B–127–80a Standard Specification for Nickel-Copper Alloy (UNS No. 4400) Plate, Sheet and Strip.
B–152–84 Standard Specification for Copper Sheet, Strip, Plate and Rolled Bar.
F–1121–87 Standard Specification for International Shore Connections for Marine Fire Applications.
F–1122–87 Standard Specification for Quick Disconnect Couplings.
F–1196–89 Standard Specification for Sliding Watertight Door Assemblies.
F–1197–89 Standard Specification for Sliding Watertight Door Control Systems.
F–1271–89 Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications.
F–1273–91 Standard Specification for Tank Vent Flame Arresters.

NFPA No.

302 Fire Protection Standard for Pleasure and Commercial Motor Craft.

SAE No.

J–1928–89 Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications.
J–1942–89 Hose and Hose Assemblies for Marine Applications.

UL No.

1111–88 Marine Carburetor Flame Arresters.

Discussion of Comments and Changes

A total of four comment letters were received. Three of the letters were supportive of the efforts by the Coast Guard to incorporate industry standards by reference. One letter suggested incorporation of a standard which is currently under development by the American Society for Testing and Materials. The Coast Guard will consider incorporation of the standard once the standard is completed.

One comment letter questioned the reasons for incorporation of two standards, API RP 14C and RP 53, into § 58.03–1 of 46 CFR and commented that the most current editions should be incorporated if the standards are needed. As the comment correctly pointed out, industrial systems on Outer Continental Shelf (OCS) facilities are the primary responsibility of the Mineral Management Service (MMS). However, MMS has no jurisdiction over U.S. flagged mobile offshore drilling units (MODU's) drilling in foreign waters. Because the U.S. Coast Guard has this regulatory responsibility, its regulations address industrial systems, such as blowout preventer equipment and high pressure mud and cement piping on U.S. flagged MODU's operating outside of our OCS. API RP 14C and RP 53 were added to part 58 in December 1978 (43 FR 56801) and were merely consolidated with all other adopted standards into the format prescribed for incorporation by reference. The Coast Guard agrees with the comment regarding incorporation of the current edition of the standards, and this change has been made.

In the Notice of Proposed Rulemaking, the addition of a new § 182.01–10, Incorporation by Reference, was proposed. The standards to be incorporated were determined not to be necessary in the regulatory text. Therefore, the proposed section has not been included in the Final Rule.

Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 127.003 and 154.106 and 46 CFR 25.01–3, 32.01–1, 34.01–15, 52.01–1, 53.01–1, 54.01–1, 55.01–1, 56.01–2, 57.02–1, 58.03–1, 59.01–2, 76.01–2, 92.01–2, 95.01–2, 108.101, 150.210, 153.4, 170.015, 174.007, 182.01–10, 190.01–3, and 193.01–3 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in those sections.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that no further Regulatory Evaluation is necessary.

These regulations will result in overall savings for industry and the Coast Guard. While industry may incur some short-term retooling costs to change from approval numbers to industry standard markings, these costs should be offset in the long term by the savings realized from reduced administrative costs and industry standardization.

Small Entities

As discussed under "Regulatory Evaluation", this rule will not have a significant impact on any entity. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule revises existing regulations to clarify technical requirements, correct errors, and substitute industry standards for existing regulatory requirements. A Categorical Exclusion Determination is available in the docket for inspection or copying at the office of the Executive Secretary, Marine Safety Council, room 3406, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

List of Subjects

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 32

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Navigation (water), Occupational

safety and health, Seamen, Vapor control.

46 CFR Part 34

Cargo vessels Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 50

Marine safety, Vessels.

46 CFR Parts 52, 53, and 54

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 55

Incorporation by reference, Nuclear vessels, Reporting and recordkeeping requirements.

46 CFR Parts 56, 57, 58, and 59

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 76

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 91

Cargo vessels, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Incorporation by reference, Marine safety.

46 CFR Part 107

Incorporation by reference, Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 150

Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 163

Marine safety.

46 CFR Part 169

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Parts 170 and 174

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 182

Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 189

Incorporation by reference, Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 193

Incorporation by reference, Marine safety, Oceanographic research vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 127 and 154 and 46 CFR parts 25, 32, 34, 50, 52, 53, 54, 55, 56, 57, 58, 59, 71, 76, 91, 92, 95, 107, 108, 150, 153, 162, 163, 169, 170, 174, 182, 189, 190, and 193 as follows:

TITLE 33—[AMENDED]

PART 127—[AMENDED]

1. The authority citation for part 127 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 127.003 is revised to read as follows:

§ 127.003 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F–1121, International Shore Connections for Marine Fire Applications, 1987 ..... 127.611

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269

NFPA 10, Portable Fire Extinguishers, 1984 ..... 127.603

NFPA 51B, Cutting and Welding Processes, 1984 ..... 127.405

NFPA 59A, Production, Storage, and Handling of Liquefied Natural Gas (LNG), 1985...127.101; 127.201; 127.405; 127.603

NFPA 70, National Electrical Code, 1987 ..... 127.107; 127.201

NFPA 251, Fire Tests of Building Construction and Materials, 1985... 127.005

3. Section 127.611 is revised to read as follows:

§ 127.611 International shore connection.

The marine transfer area must have an international shore connection that is in accordance with ASTM F–1121, a 2½ inch fire hydrant, and 2½ inch fire hose of sufficient length to connect the fire hydrant to the international shore connection on the vessel.

PART 154—[AMENDED]

4. The authority citation for Part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(c); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

5. Section 154.106 is revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and

at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Petroleum Institute (API)

2101 L Street NW., Washington, DC 20037
API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987)..... 154.814
API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985..... 154.824

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1988...154.500; 154.808; 154.810
ANSI B16.24, Bronze Pipe Flanges and Flange Fittings Class 150 and 300, 1979..... 154.500; 154.808
ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda)...154.510; 154.808

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1122, Standard Specifications for Quick Disconnect Couplings, 1987.....154.500

International Electrotechnical Commission (IEC)

Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembe, Geneva, Switzerland
IEC 309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979.....154.812
IEC 309–2—Plugs, Socket-Outlets and Couplers for Industrial Purposes; Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981..... 154.812

National Electrical Manufacturers Association (NEMA)

2101 L Street NW., Washington, DC 20036
ANSI NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988.... 154.812

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269
NFPA 70, National Electric Code, 1987..... 154.735; 154.808; 154.812

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place, London SWIE 5BH, England
International Safety Guide for Oil Tankers and Terminals, Third Ed., 1988..... 154.735; 154.810

6. Section 154.500 is amended by revising paragraph (d)(3) to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(d) * * *

(3) Quick-disconnect couplings that meet ASTM F–1122.

* * * * *

TITLE 46—[AMENDED]

PART 25—[AMENDED]

7. The authority citation for part 25 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 4302; 49 CFR 1.46.

8. Section 25.01–3 is revised to read as follows:

§ 25.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC)

P.O. Box 747, 405 Headquarters Drive, suite 3, Millersville, MD 21108–0747
Standard A–1–78, Marine LPG-Liquefied Petroleum Gas Systems, December 15, 1978.....25.45–2
Standard A–22–78, Marine CNG-Compressed Natural Gas Systems, December 15, 1978.....25.45–2

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02260
NFPA 302, Fire Protection Standard for Pleasure and Commercial Motor Craft, 1989.....25.45–2

Society of Automotive Engineers (SAE)

400 Commonwealth Drive, Warrendale, PA 15096
SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, June 1989..... 25.35–1

Underwriter's Laboratories (UL)

12 Laboratory Drive, Research Triangle Park, NC 27709
UL 1111, Marine Carburetor Flame Arrestors, June 1988.....25.35–1

9. Section 25.35.1 is amended by revising paragraph (c) and removing paragraphs (d) and (e) to read as follows:

§ 25.35–1 Requirements.

* * * * *

(c) Installations consisting of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet applicable requirements of subpart 58.10 of this chapter.

PART 32—[AMENDED]

10. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Existing subpart 32.01 is redesignated as subpart 32.02 and §§ 32.01–1, 32.01–5, 32.01–10, and 32.01–15 are redesignated, respectively, as §§ 32.02–1, 32.02–5, 32.02–10, and 32.02–15; new subpart 32.01, consisting of § 32.01–1, is added to read as follows:

Subpart 32.01—General

Sec.
32.01.1 Incorporation by reference.

Subpart 32.01—General

§ 32.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Bureau of Shipping (ABS)

45 Eisenhower Drive, Paramus, NJ 07652
Rules for Building and Classing Steel Vessels, 1989... 32.15–15; 32.60–10; 32.65–40

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1273, Standard Specification for Tank Vent Flame Arresters, 1991.....32.20–10

12. Section 32.20–10 is revised to read as follows:

§ 32.20–10 Flame arresters—TB/ALL.

Flame arresters must be of a type and size suitable for the purpose intended and meet ASTM F–1273.

PART 34—[AMENDED]

13. The authority citation for part 34 continues to read as follows:

Authority. 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. The heading of subpart 34.01 is revised to read as follows:

Subpart 34.01—General

15. The heading of § 34.01–1 is revised to read as follows:

§ 34.01–1 Applicability—TB/ALL.

16. Section 34.01–15 is added to read as follows:

§ 34.01–15 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1121, Standard Specification for International Shore Connections for Marine Fire Applications, 1987.....34.10–15

17. Section 34.10–15 is amended by revising paragraph (d) to read as follows:

§ 34.10–15 Piping—T/ALL.

* * * * *

(d) Tankships of 500 gross tons and over on an international voyage must be provided with at least one international shore connection which meets ASTM F–1121. Facilities must be available enabling such a connection to be used on either side of the vessel.

* * * * *

PART 50—[AMENDED]

18. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 50.01–20 also issued under the authority of 44 U.S.C. 3507.

Subpart 50.15—[Removed]

19. Subpart 50.15 is removed.

PART 52—[AMENDED]

20. The authority citation for part 52 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. Subpart 52.01 is amended by removing the note following the subpart heading, removing § 52.01–1(a)(1), redesignating § 52.01–1 and § 52.01–2, and adding new § 52.01–1 to read as follows:

Subpart 52.01—[Amended]

§ 52.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, Section I, Power Boilers, July 1989 with 1989 addenda...52.01–2; 52.01–5; 52.01–50; 52.01–90; 52.01–95; 52.01–100; 52.01–105; 52.01–110; 52.01–115; 52.01–120; 52.01–135; 52.01–140; 52.01–145; 52.05–1; 52.05–15; 52.05–20; 52.05–30; 52.05–45; 52.15–1; 52.15–5; 52.20–1; 52.20–17; 52.20–25; 52.25–3; 52.25–5; 52.25–7; 52.25–10

PART 53—[AMENDED]

22. The authority citation for part 53 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

23. Subpart 53.01 is amended by removing the note following the subpart heading, removing § 53.01–1(a)(1), redesignating § 53.01–1 as § 53.01–3, and adding a new § 53.01–1 to read as follows:

53.01—[Amended]

§ 53.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, Section IV, Heating Boilers, July 1989 with 1989 addenda.... 53.01–5; 53.01–10; 53.05–1; 53.05–3; 53.05–5; 53.10–1; 53.10–3; 53.10–10; 53.10–15; 53.12–1

PART 54—[AMENDED]

24. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

25. Subpart 54.01 is amended by removing Notes (1) and (2) preceding § 54.01–1, removing § 54.01–3, redesignating §§ 54.01–1 and 54.01–2 as §§ 54.01–2 and 54.01–3, respectively, and adding a new § 54.01–1 to read as follows:

Subpart 54.01—[Amended]

§ 54.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017

Boiler and Pressure Vessel Code, section VIII, Division 1, Pressure Vessels, July 1989 with 1989 addenda...54.01–2; 54.01–5; 54.01–15; 54.01–18; 54.01–25; 54.01–30; 54.01–35; 54.03–1; 54.03–5; 54.05–1; 54.10–1; 54.10–3; 54.10–5; 54.10–10; 54.10–15; 54.15–1; 54.15–5; 54.15–10; 54.15–13; 54.20–1; 54.20–3; 54.25–1; 54.25–3; 54.25–5; 54.25–8; 54.25–10; 54.25–15; 54.25–20; 54.25–25; 54.30–3; 54.30–5; 54.30–10

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM A–20, Steel Plates for Pressure Vessels, 1980.....54.25–10

ASTM A–203, Pressure Vessel Plates, Alloy Steel, Nickel, 1980.....54.05–20

ASTM A–370, Mechanical Testing of Steel Products, 1977.....54.25–20

ASTM E–23, Notched Bar Impact Testing of Metallic Materials, 1980.....54.05–5

ASTM E–208, Conducting Drop-Weight Test to Determine Nil-Ductility Transition Temperature of Ferritic Steels, 1969.....54.05–5

Compressed Gas Association (CGA)

500 Fifth Avenue, New York, NY 10036

S–1.2, Safety Relief Device Standards—Cargo and Portable Tanks for Compressed Gases, 1979.....54.15–25

S–1.2.5.2, Flow Test of Safety Relief Valves, 1979.....54.15–10

Manufacturers Standardization Society (MSS)

127 Park Street, NE. Vienna, VA 22180

SP–25, Standard Marketing System for Valves, Fittings, Flanges and Unions, 1978.....54.01–25

Tubular Exchanger Manufacturer's Association (TEMA)

707 Westchester Avenue, White Plains, NY 10604

Heat Exchangers, Class "B", "C", or "R", 1978.....54.01–3

26. Section 54.15–1 is amended by revising the section heading and paragraph (a) to read as follows:

§ 54.15–1 General (modifies UG–125 through UG–136).

(a) All pressure vessels built in accordance with applicable requirements in Division 1 of section VIII of the ASME Code must be provided with protective devices as indicated in UG–125 through UG–136 except as noted otherwise in this subpart.

* * * * *

27. Section 54.15–5 is amended by revising paragraph (a) to read as follows:

§ 54.15–5 Protective devices (modifies UG–125).

(a) All pressure vessels must be provided with protective devices. The protective devices must be in accordance with the requirements of UG–125 through UG–136 of the ASME Code except as modified in this subpart.

* * * * *

PART 55—[AMENDED]

28. The authority citation for part 55 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

29. Subpart 55.01 is amended by removing the note following the subpart heading, removing § 55.01–1(a)(1), redesignating § 55.01–1 as § 55.01–3, and adding a new § 55.01–1 to read as follows:

Subpart 55.01—[Amended]

§ 55.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017

Boiler and Pressure Vessel Code, section III, Division 1, Rules for Construction of Nuclear Power Plant Components, July 1989 with 1989 addenda. 55.01–03; 55.05–1; 55.10–1; 55.10–5; 55.10–20; 55.10–25; 55.10–30; 55.10–35; 55.10–40; 55.15–1; 55.15–3; 55.15–5; 55.15–10; 55.15–15; 55.20–1; 55.20–5; 55.20–10; 55.20–20; 55.25–1; 55.25–10

PART 56—[AMENDED]

30. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Paragraph (b) of § 56.01–2 is amended by removing the entry "SAE J–343–80", and adding "SAE J–1942–89" after the entry "SAE J–1475–84" to read as follows:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

SAE J-1942–89, Hose and Hose Assemblies for Marine Applications.....56.60–25

* * * * *

32. Section 56.60–25 is amended by removing table 56.60–25(c), and revising paragraph (c) to read as follows:

§ 56.60–25 Nonmetallic materials.

* * * * *

(c) *Nonmetallic flexible hose.* (1) Nonmetallic flexibile hose must be in accordance with SAE J–1942 and may be installed only in vital and nonvital fresh and salt water systems, nonvital pneumatic systems, lube oil and fuel systems, and fluid power systems.

(2) Nonmetallic flexible hose may be used in vital fresh and salt water systems at a maximum service pressure of 150 psi. Nonmetallic flexible hose may be used in lengths not exceeding 30 inches where flexibility is required subject to the limitations of paragraphs (a) (1) through (6) of this section. Nonmetallic flexible hose may be used for plastic pipe in duplicate installations

in accordance with paragraph (b) of this section.

(3) Nonmetallic flexible hose may be used for plastic pipe in nonvital fresh and salt water systems and nonvital pneumatic systems subject to the limitations of paragraphs (a) (1) through (6) of this section. Unreinforced hoses are limited to a maximum service pressure of 50 psi, reinforced hoses are limited to a maximum service pressure of 150 psi.

(4) Nonmetallic flexible hose may be used in lube oil, fuel oil and fluid power systems only where flexibility is required and in lengths not exceeding 30 inches.

(5) Nonmetallic flexible hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose end fittings must comply with SAE J–1475. Field attachable fittings must be installed following the manufacturer's recommended practice. If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5 of this part.

* * * * *

PART 57—[AMENDED]

33. The authority citation for part 57 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. Subpart 57.02 is amended by redesignating §§ 57.02–1 through 57.02–4 as §§ 57.02–2 through 57.02–5, respectively, and adding a new § 57.02–1 to read as follows:

Subpart 57.02—[Amended]

§ 57.02–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW. Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017

Boiler and Pressure Vessel Code, section IX, Welding and Brazing Qualifications, July 1989 with 1989 addenda. 57.01–1; 57.02–2; 57.02–3; 57.02–4; 57.03–1; 57.04–1; 57.05–1; 57.06–1; 57.06–3; 57.06–4

PART 58—[AMENDED]

35. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

36. Subpart 58.03, consisting of § 58.03–1, is revised to read as follows:

Subpart 58.03—Incorporation of Standards

Sec.

58.03–1 Incorporation by reference.

Subpart 58.03—Incorporation of Standards

§ 58.03–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC)

P.O. Box 747, 405 Headquarters Drive, suite 3, Millersville, MD 21108

P–1–73, Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1973..... 58.10–5

American Bureau of Shipping (ABS)

45 Eisenhower Drive, Paramus, NJ 07653

Rules for Building and Classing Steel Vessels, 1989...58.01–5; 58.05–1; 58.10–15; 58.20–5; 58.25–5

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018

ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987.....58.60–7

ANSI B31.5, Refrigeration Piping, 1987..... 58.20–5; 58.20–20

ANSI B93.5, Recommended practice for the use of Fire Resistant Fluids for Fluid Power Systems, 1979..... 58.30–10

American Petroleum Institute (API)

1201 L Street NW., Washington, DC 20037.

API RP 14C, Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, 1986.....58.60–9

API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells, 1984..... 58.60–7

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017.

Boiler and Pressure Vessel Code,

Section I, Power Boilers, July 1989 with 1989 addenda..... 58.30–15

Section III, Division 1, Rules for Construction of Nuclear Power Plant Components, July 1989 with 1989 addenda..... 58.30–15

Section VIII, Division 1, Pressure Vessels, July 1989 with 1989 addenda.....58.30–15

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM A–193–90, Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service, 1990.....58.30–15

ASTM B–122–85, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver) and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar, 1985..... 58.50–5

ASTM B–127–80a, Standard Specification for Nickel-Copper Alloy (UNS No. 4400) Plate, Sheet and Strip, 1980..... 58.50–5; 58.50–10

ASTM B–152–84, Standard Specification for Copper Sheet, Strip, Plate and Rolled Bar, 1984.....58.50–5

ASTM B–209–81, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate, 1981..... 58.50–5; 58.50–10

ASTM D–92–78, Test Method for Flash and Fire Points by Cleveland Open Cup, 1978.....58.30–10

ASTM D–93–80, Test Method for Flash Point by Pensky-Martens Closed Tester, 1980.....58.01–10; 58.01–15; 58.30–10

ASTM D–323–79, Test Method for Vapor Pressure of Petroleum Products (Reid Method), 1979..... 58.16–5

Military Specifications (MIL–SPEC)

Naval Publication and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120

MIL–S–901, Requirements for High Impact Shock Tests of Shipboard Machinery Equipment and Systems, 1963..... 58.30–17

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269

NFPA 302, Fire Protection Standard for Pleasure and Commercial Craft, 1989.....58.10–5

Society of Automotive Engineers (SAE)

400 Commonwealth Drive, Warrendale, PA 15096

SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, 1989.....58.10–5

Underwriters Laboratories, Inc. (UL)

12 Laboratory Drive, Research Triangle Park, NC 27709

UL 1111, Marine Carburetor Flame Arresters, 1988.....58.10–5

37. Section 58.10–5 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 58.10–5 Gasoline engine installations.

* * * * *

(b) * * *

(2) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of this section.

(3) The following are acceptable means of backfire flame control for gasoline engines:

(i) A backfire flame arrester complying with SAE J–1928 or UL 1111 and marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.

(ii) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an acceptable backfire flame arrester. A gasoline engine utilizing an air and fuel induction system, and operated without an approved backfire flame arrester, must either include a reed valve assembly or be installed in accordance with SAE J–1928.

(iii) An arrangement of the carburetor or engine air induction system that will disperse any flames caused by engine backfire. The flames must be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons, on board, or nearby vessels and structures. Flame dispersion may be achieved by attachments to the carburetor or location of the engine air induction system. All attachments must be of metallic construction with flametight connections and firmly secured to withstand vibration, shock, and engine backfire. Such installations do not require formal approval and labeling but must comply with this subpart.

* * * * *

38. Section 58.60–7 is revised to read as follows:

§ 58.60–7 Industrial systems: piping.

The piping for industrial systems under this subpart must meet ANSI B31.3, except that blow out preventor control systems must also meet API RP 53.

39. Section 58.60–9 is revised to read as follows:

§ 58.60–9. Industrial systems: design.

Each system under this subpart must be designed and analyzed in accordance with the principles of API RP 14C.

PART 59—[AMENDED]

40. The authority citation for part 59 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

41. Section 59.01–2 is added to read as follows:

§ 59.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017

Boiler and Pressure Vessel (B&PV) Code Section I, Power Boilers, July 1989 with 1989 addenda 59.10–5

Boiler and Pressure Vessel Code Section VII, Recommended Guidelines for the Care of Power Boilers, July 1989 with 1989 addenda 59.01–5

Boiler and Pressure Vessel Code Section VIII, Division 1, Pressure Vessels July 1989 with 1989 addenda 59.10–5; 59.10–10

Boiler and Pressure Vessel Code Section IX, Welding and Brazing Qualifications, July 1989 with 1989 addenda 59.10–5

PART 71—[AMENDED]

42. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

43. Section 71.65–5 is amended by revising paragraph (b)(11) to read as follows:

§ 71.65–5 Plans and specifications required for new construction.

* * * * *

(b) Hull Structure * * *

(11) * Details of Hinged Subdivision Watertight Doors and Operating Gear.[1]

* * * * *

PART 76—[AMENDED]

44. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Section 76.01–2 is added to read as follows:

§ 76.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is

[1] The Asterisk (*) indicates items that are approved by the American Bureau of Shipping for vessels classed by it. Items approved the American Bureau of Shipping are generally accepted as satisfactory unless the law or Coast Guard regulations contain requirements that are not covered by the American Bureau of Shipping.

available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F-1121, International Shore Connections for Marine Fire Applications, 1987	76.10-10

46. Section 76.10-10 is amended by revising paragraph (c) to read as follows:

§ 76.10-10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adaptors also must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F-1121. Facilities must be available enabling an international shore connection to be used on either side of the vessel.

* * * * *

PART 91—[AMENDED]

47. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

48. Section 91.55-5 is amended by revising paragraph (b)(11) to read as follows:

§ 91.55-5 Plans and specifications required for new construction.

* * * * *

(b) Hull Structure * * *

(11) *Details of Hinged Subdivision Watertight Doors and Operating Gear.[1]

* * * * *

PART 92—[AMENDED]

49. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

50. Section 92.01-2 is added to read as follows:

§ 92.01-2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F-1196, Sliding Watertight Door Assemblies, 1989	92.01-13
ASTM F-1197, Sliding Watertight Door Control Systems, 1989	92.01-13

51. Section 92.01-13 is revised to read as follows:

§ 92.01-13 Sliding watertight door assemblies.

(a) Sliding watertight door assemblies, where fitted, must—

(1) Be designed, constructed, built, tested, and marked in accordance with ASTM F-1196;

(2) Have controls in accordance with ASTM F-1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements S1 and S3 of ASTM F-1196, unless the watertight door assemblies are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196 must be met. In either case, the operating systems must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F-1197.

(b) Installation of watertight door assemblies must be in accordance with the following.

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations may be submitted for consideration by the Commanding Officer, Marine Safety Center, 400 7th Street SW., Washington, DC 20590-0001. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames may be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 95—[AMENDED]

52. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 95.01-2 is added to read as follows:

§ 95.01-2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F-1121, International Shore Connections for Marine Fire Applications, 1987.....95.10-10

54. Section 95.10-10 is amended by revising paragraph (c) to read as follows:

§ 95.10-10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adapters also must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F-1121. Facilities must be available enabling an international connection to be used on either side of the vessel.

* * * * *

PART 107—[AMENDED]

55. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

56. Section 107.305 is amended by revising paragraph (m) to read as follows:

§ 107.305 Plans and information.

* * * * *

(b) Hull structure * * *

(m) Details of hinged subdivision watertight doors and operating gear.[1]

* * * * *

PART 108—[AMENDED]

57. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

58. Section 108.101 is revised to read as follows:

§ 108.101 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B16.5, Pipe Flanges and Flanged Fittings, 1988.....150.480
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979.....150.480
ANSI B16.31, Non-Ferrous Pipe Flanges, 1971.....150.480
ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection, 1979.....150.395; 150.457
ANSI Z88.2, Practices for Respiratory Protection, 1980.....150.395; 150.457; 150.460

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F-1014, Standard Specification for Flashlights on Vessels, 1986.....108.497
ASTM F-1121, International Shore Connections for Marine Fire Applications, 1987.....108.427

Note: All other documents referenced in this part are still in effect.

59. Section 108.427 is amended by revising paragraph (a) to read as follows:

§ 108.427 International shore connection.

* * * * *

(a) At least one international shore connection that meets ASTM F-1121.

* * * * *

PART 150—[AMENDED]

60. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; § 150.105 also issued under the authority of 44 U.S.C. 3507.

61. Section 150.210 is revised to read as follows:

§ 150.210 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B16.5, Pipe Flanges and Flanged Fittings, 1988.....150.480
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979.....150.480
ANSI B16.31, Non-Ferrous Pipe Flanges, 1971.....150.480
ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection, 1979.....150.395; 150.457
ANSI Z88.2, Practices for Respiratory Protection, 1980.....150.395; 150.457; 150.460

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F-1122, Standard Specification for Quick Disconnect Couplings, 1987.....150.480

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269
NFPA 306, Control of Gas Hazards on Vessels, 1984.....150.460

62. Section 150.480 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 150.480 Standards for marking of cargo hose carried onboard.

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that meet ASTM F-1122 and are marked "Cl-1."

* * * * *

PART 153—[AMENDED]

63. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804; §§ 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

64. Section 153.4 is added to read as follows:

§ 153.4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B16.5, Pipe Flanges and Flanged Fittings, 1988.....153.940
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979.....153.940
ANSI B16.31, Non-Ferrous Flanges, 1971.....153.940

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F-1122, Standard Specification for Quick Disconnect Couplings, 1987.....153.940
ASTM F-1271, Standard Specification for Spill Valves for use in Marine Tank Liquid Overpressure Protection Applications, 1989.....153.365

65. Section 153.365 is amended by revising paragraph (b)(1) to read as follows:

§ 153.365 Liquid overpressurization protection.

* * * * *

(b) * * *

(1) Meets ASTM F-1271; and

* * * * *

66. Section 153.940 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 153.940 Standards for marking of cargo hose.

* * *

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that comply with ASTM F-1122, and are marked "C1-1."

* * * * *

PART 162—[AMENDED]

67. The authority citation for part 162 is revised to read as follows:

Authority: 33 U.S.C. 1321(j) 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

Subparts 162.016, 162.034, 162.041, 162.042, and 162.043 [Removed]

68. Part 162 is amended by removing and reserving subparts 162.016, 162.034, 162.041, 162.042, and 162.043.

69. The heading of subpart 162.017 is revised to read as follows:

Subpart 162.017—Valves, Pressure-Vacuum Relief, for Tank Vessels

70. Section 162.017-2 is revised to read as follows:

§ 162.017-2 Type.

This specification covers the design and construction of pressure-vacuum relief valves intended for use in venting systems on all tank vessels transporting inflammable or combustible liquids.

71. Section 162.017-3 is amended by revising paragraph (b) to read as follows:

§ 162.017-3 Materials, construction, and workmanship.

* * * * *

(b) Bodies of pressure-vacuum relief valves must be made of bronze or such corrosion-resistant material as may be approved by the Commandant (G-MTH).

* * * * *

72. Section 162.017-4 is revised to read as follows:

§ 162.017-4 Inspections and testing.

Pressure-vacuum relief valves may be inspected and tested at the plant of the manufacturer. An inspector may conduct such tests and examinations as may be necessary to determine compliance with this specification.

73. Section 162.017-6 is revised to read as follows:

§ 162.017-6 Procedure for approval.

(a) *General.* Pressure-vacuum relief valves intended for use on tank vessels must be approved for such use by the Commandant (G-MTH), U.S. Coast Guard, Washington, DC 20593-0001.

(b) *Drawings and specifications.* Manufacturers desiring approval of a new design or type of pressure-vacuum relief valve shall submit drawings in quadruplicate showing the design of the valve, the sizes for which approval is requested, method of operation, thickness and material specification of component parts, diameter of seat opening and lift of discs, mesh and size of wire of flame screens.

(c) *Pre-approval tests.* Before approval is granted, the manufacturer shall have tests conducted, or submit evidence that such tests have been conducted, by the Underwriters' Laboratories, the Factory Mutual Laboratories, or by a properly supervised and inspected test laboratory acceptable to the Commandant (G-MTH), relative to determining the lift, relieving pressure and vacuum, and flow capacity of a representative sample of the pressure-vacuum relief valve in each size for which approval is desired. Test reports including flow capacity curves must be submitted to the Commandant (G-MTH).

PART 163—[AMENDED]

74. The authority citation for part 163 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 163.001 [Removed]

75. Part 163 is amended by removing and reserving Subpart 163.001.

PART 169—[AMENDED]

76. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.45, 146; § 169.117 also issued under the authority of 44 U.S.C. 3507.

77. Section 169.611 is amended by revising paragraph (c) and removing paragraph (d) to read as follows:

§ 169.611 Carburetors.

* * * * *

(c) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 165.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of part 58, subpart 58.10 (Internal Combustion Engine Installations) of this chapter.

PART 170—[AMENDED]

78. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

79. Section 170.015 is revised to read as follows:

§ 170.015 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1196, Sliding Watertight Door Assemblies, 1989.....170.270
ASTM F–1197, Sliding Watertight Door Control Systems, 1989.....170.270

Military Specification

Naval Publications and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120
MIL–P–21929B, Plastic Material, Cellular Polyurethane, Foam in Place, Rigid, 1970.....170.245

International Maritime Organization (IMO)

Publications Section, International Maritime Organization, 4 Albert Embankment, London SE1 7SR
Resolution A.265 (VIII).....170.135

80. Section 170.270 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 170.270 Door design, operation, installation, and testing.

* * * * *

(c) Each Class 2 and Class 3 door must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F–1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, control systems for watertight doors must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F–1197.

(d) Installations of sliding watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

* * * * *

PART 174—[AMENDED]

81. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

82. Section 174.007 is added to read as follows:

§ 174.007 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1196, Sliding Watertight Door Assemblies, 1989.....174.100
ASTM F–1197, Sliding Watertight Door Control Systems, 1989.....174.100

83. Section 174.100 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 174.100 Appliances for watertight and weathertight integrity.

* * * * *

(e) If a unit is equipped with sliding watertight doors, each sliding watertight door must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197, except that a remote manual means of closure, as specified in paragraphs 7.1 and 7.5.1, and a remote mechanical indicator, as specified in paragraph 7.5.2, will not be required; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F–1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, control systems for watertight doors must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F–1197.

(f) Installations of sliding watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating

shall be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 182—[AMENDED]

84. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

85. Section 182.15–7 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 182.15–7 Carburetors.

* * * * *

(b) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction system bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are servicable and in good condition. New installations or replacements must meet the applicable requirements of subpart 58.10 of subchapter F (Marine Engineering) of this chapter.

PART 189—[AMENDED]

86. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; E.O. 11735, 38 FR 31243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

87. Section 189.55–5 is amended by revising paragraph (b)(11) to read as follows:

§ 189.55–5 Plans and specifications required for new construction.

* * * * *

(b) Hull structure * * *

(11) *Details of hinged subdivision watertight doors and operating gear.

* * * * *

PART 190—[AMENDED]

88. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2213, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

The asterisk (*) indicates items which may require approval by the American Bureau of Shipping for vessels classed by that society.

89. Section 190.01–3 is added to read as follows:

§ 190.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F–1196, Sliding Watertight Door Assemblies, 1989 ..... 190.01–13

ASTM F–1197, Sliding Watertight Door Assemblies, 1989 ..... 189.01–13

88. Section 190.01–13 is revised to read as follows:

§ 190.01–13 Sliding watertight doors.

(a) Sliding watertight door assemblies, where fitted, must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F–1196, unless the watertight door assemblies are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirement Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, control systems for watertight door assemblies must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirement Nos. S1 through S4 of ASTM F–1197.

(b) Installations of sliding watertight door assemblies must be in accordance with the following:

Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 193—[AMENDED]

91. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306: E.O. 12234, 34 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

92. Section 193.01–3 is added to read follows:

§ 193.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA 19103

ASTM F–1121, International Shore Connections for Marine Fire Applications, 1987 ..... 193.10–10

93. Section 193.10–10 is amended by revising paragraph (c) to read as follows:

§ 193.10–Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cutout valves and check valves must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F–1121. Facilities must be available enabling an international shore connection to be used on either side of the vessel.

* * * * *

Dated: February 8, 1991.

J.D. Sipes,

Rear Adminial, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–17642 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 165

[CGD1 91–106]

Safety Zone Regulations: Echo Bay, New Rochelle, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Echo Bay, New Rochelle, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This regulation becomes effective at 9 p.m. local time 27 July 1991. It terminates at 10 p.m. local time 27 July 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer, Captain of the Port New York, and LT John B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 9 p.m., 27 July 1991 to 10 p.m., 27 July 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T1106 is added to read as follows:

§ 165.T1106 Safety Zone: Echo Bay, New Rochelle, New York.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 hundred yard radius of the fireworks barge located in Echo Bay, New Rochelle, New York.

(b) *Effective date.* This regulation becomes effective at 9 p.m. local time 27 July 1991. It terminates at 10 p.m. local time 27 July 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–17904 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD1 91–107]

Safety Zone Regulations: Upper Bay, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay, New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This regulation becomes effective at 9 p.m. local time 8 August 1991. It terminates at 10 p.m. local time 8 August 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port of New York, and LT John B. Gately, project attorney, first Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 9 p.m., 8 August 1991 to 10 p.m., 8 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures. Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T1107 is added to read as follows:

§ 165.T1107 Safety Zone: Upper Bay, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 yard radius of the fireworks barge located at 40° 41' 17" North and 74° 02'26" west in Federal Anchorage 20C east of Liberty Island.

(b) *Effective date.* This regulation becomes effective at 9 p.m. local time 8 August 1991. It terminates at 10 p.m. local time 8 August 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 09 July 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-17902 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-110]

Safety Zone Regulations: Upper Bay, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay, New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 9 p.m. local time 7 August 1991. It terminates at 10 p.m. local time 7 August 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT John B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 9 p.m., 7 August 1991 to 10 p.m., 7 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1110 is added to read as follows:

§ 165.T1110 Safety Zone: Upper Bay, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 yard radius of the fireworks barge located at 40° 41'17" North and 74° 02'26" West in Federal Anchorage 20C east of Liberty Island.

(b) *Effective date.* This regulation becomes effective at 9 p.m. local time 7 August 1991. It terminates at 10 p.m. local time 7 August 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 9, 1991.

R. M. Larrabee,

Captain, U. S. Coast Guard Captain of the Port, New York.

[FR Doc. 91-17903 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3978-3]

Indiana: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of revisions to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Indiana to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA"). Indiana's application for program revision is available for public review and comment.

DATES: Final authorization of Indiana's application shall be effective September 27, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule.

All comments on Indiana's program revision application must be received by 4:30 p.m. central standard time on August 28, 1991.

ADDRESSES: Copies of Indiana's program revision application are available for inspection and copying, from 8:30 a.m. to 4:30 p.m., at the following addresses: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206, Contact: Michael Dalton, (317) 232-8884; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382-5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact: George Woods, (312) 886-6134. Written comments on Indiana's application should be sent to George Woods, at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6134 (FTS 886–6134).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation see section C of this notice.

In accordance with part 271, § 271.21(a) of title 40 of the Code of Federal Regulations (40 CFR 271.21(a)), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program effective January 31, 1986 (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program effective December 31, 1986 (51 FR 39752–39754, October 31, 1986), January 19, 1988 (53 FR 128–129, January 5, 1988), and September 11, 1989 (54 FR 29557–29559, July 13, 1989). On September 1, 1989, Indiana submitted a program revision application for additional program approvals covering section 3006(f) of HSWA: Availability of Information, and some minor, State initiated clarifications to the interim status closure plan amendment process. These clarifications make Indiana's rule more stringent than the EPA standard. Today, Indiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Indiana's application and has made an immediate final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Indiana for its additional program revisions. The public may submit written comments on EPA's immediate final decision up until August 28, 1991. Copies of Indiana's application for this program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On the effective date of final authorization, Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's regulations found at title 329 of the Indiana Administrative Code, article 3 (329 IAC 3), effective July 29, 1989, and those statutes of the Indiana Code found at title 4, article 21 (IC 4–21), and title 5, article 14 (IC 5–14), effective July 1, 1987. These State rules and statutes are being recognized as analogous to the following Resource Conservation and Recovery Act rules found at title 40 of the Code of Federal Regulations, and the Freedom of Information Act, 5 U.S.C. 552:

Federal requirement	Analogous state authority
1. Section 3006(f) Availability Of Information; November 8, 1984. 40 CFR, §§ 2.100(b), 2.104(b), 2.109(b), 2.112, 2.113(f), 2.114(a), 2.116, 2.117, 2.120(d), 2.201(e), 2.204(d)(1)(ii), 2.208, 270.12, 271.21(a); 5 U.S.C. 552(a)(4)(E), and (a)(6)(C).	329 IAC 3–34–3, 3–58–1 through 3–58–16, 3–59–1 through 3–59–9; IC 4–21.5–3–27, IC 4–21.5–3–29, IC 4–21.5–5–5, IC 5–14–3–4, IC 5–14–3–9 (d) and (h).
2. 40 CFR 265.112, Closure Plan; amendment of plan. May 2, 1986, 51 FR 16443–16459.	329 IAC 3–21–3.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Indiana's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on January 31, 1986, on January 19, 1988, and on September 11, 1989, the effective dates of Indiana's final authorizations for the RCRA base program and for two approved revisions to Indiana's authorized program.

Indiana is not authorized to operate the Federal Program on Indian lands. This authority shall remain with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization would have administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized States, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, in accordance with the deadlines specified in paragraphs 40 CFR 271.21(e)(2) (ii) through (v), adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Indiana until the State receives authorization for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to any State permits. Any State requirement that

EPA has reviewed, approved, and determined to be more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable subtitle C requirements in Indiana.

With the exception of HSWA § 3006(f): State availability of Information, Indiana is not being authorized now for any other requirement implementing HSWA. Once EPA authorizes Indiana to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

D. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification in Part 272

EPA uses part 272 of 40 CFR for codification of the decision to authorize Indiana's program and for incorporation by reference of those provisions of Indiana's statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Therefore, EPA is proposing to amend part 272, subpart P. A separate **Federal Register** notice will be published for the proposed codification. This will provide notice to the public of the scope of the authorized program in Indiana.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: June 4, 1990.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received in the Office of the Federal Register on July 23, 1991.

[FR Doc. 91–17792 Filed 7–26–91; 6:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–4; RM–7588]

Radio Broadcasting Services; Eagle Grove, IA

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Iowa Inspirational Radio, allots Channel 264C3 to Eagle Grove, Iowa, as the community's first local FM service. See 56 FR 3063, January 28, 1991, Channel 264C3 can be allotted to Eagle Grove in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 42–39–54 and West Longitude 93–54–18. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–4, adopted July 9, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Eagle Grove, Channel 264C3.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17830 Filed 7–26–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–48; RM–7621]

Radio Broadcasting Services; Milford, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of 202 Data Systems, allots Channel 271C2 to Milford, Iowa, as the community's first local FM service. See

56 FR 10527, March 13, 1991. Channel 271C2 can be allotted to Milford in compliance with the Commission's minimum distance separation requirements with a site restriction of 3 kilometers (1.9 miles) northwest to avoid a short-spacing to Station KAYL–FM, Channel 268C1, Storm Lake, Iowa, at coordinates North Latitude 43–20–33 and West Longitude 95–07–40. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–48, adopted July 5, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Milford, Channel 271C2.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17832 filed 7–26–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–24; RM–7598]

Radio Broadcasting Services; Canton, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dallas M. Tarkenton, substitutes Channel 274C2 for Channel 274A at Canton, South Dakota, and modifies his construction permit for Station KIXK to specify operation on the higher powered channel. See 56 FR 7318, February 22, 1991. Channel 274C2 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.5 kilometers (12.7 miles) north to accommodate petitioner's desired transmitter site, at coordinates North Latitude 43–29–00 and West Longitude 96–38–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–24, adopted July 5, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 274A and adding Channel 274C2 at Canton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17831 Filed 7–26–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–3; RM–7589]

Radio Broadcasting Services; Reedsport, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Paul C. Bjornstad, allots Channel 258A to Reedsport, Oregon, as the community's second local FM service. See 56 FR 3063, January 28, 1991. Channel 258A can be allotted to Reedsport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43–42–00 and West Longitude 124–06–12. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–3, adopted July 9, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 258A at Reedsport.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17829 Filed 7–26–91; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: The Commission's regulations in 49 CFR 1152.20(a)(2)(vii) and 1152.50(d)(ii) require rail carriers to send notices of rail abandonment actions to various federal and state officials and agencies. One of those agencies, the Department of Defense's Military Traffic Management Command, has notified the Commission that effective August 5, 1991, that its agency which receives such notices will be relocated. In order to keep the Commission's regulations as up-to-date as possible, we are amending part 1152 to reflect this new information.

EFFECTIVE DATE: This amendment is effective on August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen King (202) 275–7429.

SUPPLEMENTARY INFORMATION: The new mailing address is:

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program), P.O. Box 6276, Newport News, VA 23606–0276. Telephone: (804) 599–1100, Telefax: (804) 599–2119.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1152 is amended as set forth below:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161 and 11163.

2. In § 1152.20, paragraph (a)(2)(vii) is revised to read as follows:

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) * * *

(b) * * *

(vii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);

* * * * *

3. In § 1152.50, paragraph (d)(1)(ii) is revised to read as follows:

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

* * * * *

(d) * * *

(1) * * *

(ii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program),

* * * * *

[FR Doc. 91–17929 Filed 7–26–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director of the Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the third quarter of 1991 for the Western pollock subarea of the Gulf of Alaska soon will be reached. The Regional Director is establishing a directed fishing allowance and NMFS is closing the directed fishery for pollock in that subarea. This action is necessary to prevent the TAC of pollock in the Western pollock subarea for the third quarter from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving pollock stocks.

DATES: Effective 12:00 noon, Alaska local time (A.l.t.), July 24, 1991, through 24:00 midnight, A.l.t., September 29, 1991.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(a)(2). Under § 672.20(a)(2)(v), the TAC for pollock in the Western and Central Regulatory areas is apportioned equally to the Western pollock subarea (combined statistical areas 61 and 62) and the Central pollock subarea (statistical area 63). Each apportionment is divided equally into four quarterly reporting periods of the fishing year. The announcement of initial harvest specifications for pollock for the 1991 fishing year established a TAC of pollock for the Western pollock subarea as 50,000 metric tons (mt) or, for each quarter, 12,500 mt plus or minus that quarter's proportional share of over or under harvest from prior quarters (56 FR 28112, June 19, 1991). The cumulative amount of pollock available for harvest for the Western pollock subarea through the third quarter of 1991 is 25,471 mt.

Under § 672.20(c)(2), the Regional Director has determined that the catch of pollock in the Western pollock subarea will reach 24,571 mt by July 24, 1991. The remaining 900 mt of pollock will be necessary for bycatch to support remaining groundfish fisheries in the Western pollock subarea during the third quarter.

With this action the Regional Director is establishing a directed fishing allowance of 24,571 mt, and is prohibiting directed fishing for pollock in the Western pollock subarea of the Gulf of Alaska for the remainder of the third quarter.

Under § 672.20(g)(3), during the effective dates of this action, vessels fishing in the Western pollock subarea (statistical areas 61 and 62) may not retain, at any particular time during a trip, pollock in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management National Marine Fisheries Service.

[FR Doc. 91–17925 Filed 7–24–91; 2:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[FV-91-414PR]

Expenses and Assessment Rate for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under the cranberry marketing order for the 1991–92 fiscal year. This action is needed for the Cranberry Marketing Committee (Committee), which is responsible for the local administration of the order, to incur operating expenses during the 1991–92 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 20, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5127.

SUPPLEMENTARY INFORMATION: This rule is proposed under the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee members are cranberry producers. They are familiar with the Committee's needs and with the costs of goods, services, and personnel in their local areas and are in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so the Committee will have funds to pay its expenses for the 1991–92 fiscal year beginning on September 1, 1991.

The Committee conducted a mail vote and recommended 1991–92 marketing order expenditures of $167,730 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1990–91 marketing year budgeted expenditures were $159,850, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Assessment income for 1991–92 is estimated at $145,965 based on a crop of 3,945,000 barrels of cranberries. Interest income expected to be received is estimated at $7,500, bringing total income to $153,465. The Committee plans to transfer $14,265 from its reserve account to meet the deficit between income and expenditures. Major budget categories for 1991–92 are $67,640 for salaries, $37,500 for travel and meeting expenses, and $44,245 for administrative expenses. Comparable budgeted expenditures for the 1990–91 season were $70,995, $39,500, and $34,425, respectively.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers.

Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, the Committee plans to meet on August 14, and anticipates revising its budget and assessment rate to reflect changes in the crop estimate. Thus, a comment period ending on August 20 would allow the Committee to submit such revisions to the Department as a comment to this proposed rule prior to finalization of this action.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.232 is added to read as follows:

§ 929.232 Expenses and assessment rate.

Expenses of $167,730 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100-pound barrel of assessable cranberries is established for the fiscal year ending on August 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: July 24, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17921 Filed 7–26–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–58–AD]

Airworthiness Directives; Avions Mudry & Cie Model CAP10B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Avions Mudry & Cie Model CAP10B airplanes. This proposed action would require a modification to the fuel system. Several incidents have occurred where air entered into the inverted flight valve on the affected airplanes. The actions specified in this proposed AD are intended to prevent engine stoppage caused by this condition.

DATES: Commments must be received on or before September 25, 1991.

ADDRESSES: Service Bulletin CAP10B No. 13, dated May 14, 1991, that is discussed in this AD may be obtained from Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; Telephone (33) 32 43 47 34; Facsimile (33) 32 43 47 90. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2716; or Mr. Michael Dahl, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Avions Mudry & Cie Model CAP10B airplanes. The DGAC reports several incidents where air entered into the inverted flight valve on the affected airplanes. The DGAC advises that this condition could occur during level flight, when the front fuel tank is less than half full, and if improper engine adjustment is causing minor vibration. Avions Mudry & Cie has issued Service Bulletin (SB) CAP10B No. 13, dated May 14, 1991, which specifies fuel system modification procedures for certain CAP 10B airplanes. The DGAC classified this service bulletin as mandatory and issued DGAC AD 91–112(A) in order to assure the airworthiness of these airplanes in France. The airplanes are manufactured in France and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other Avions Mudry & Cie CAP10B

airplanes of the same type design, the proposed AD would require modification of the fuel system in accordance with the instructions in Avions Mudry & Cie CAP10B Service Bulletin No. 13, dated May 14, 1991.

It is estimated that 25 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 8 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $403 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,075.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Avions Mudry & Cie: Docket No. 91–CE–58–AD.

Applicability: Model CAP10B Airplanes (serial numbers 01 through 208), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent engine stoppage caused by air entering the inverted flight valve, accomplish the following:

(a) Modify the fuel system in accordance with the instructions in Avions Mudry & Cie Service Bulletin CAP10B No. 13, dated May 14, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 15, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–17879 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–11]

Proposed Amendment to The Dalles Transition Area, The Dalles, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend The Dalles, Oregon Transition Area. This proposed action would provide controlled airspace for The Dalles VOR/DME-A approach segment from The Dalles VORTAC to MUGGZ intersection which is presently outside of controlled airspace.

DATES: Comments must be received on or before September 9, 1991.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Docket No. 91–ANM–11, 1601 Lind Avenue SW., Renton, WA 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 91–ANM–11, 1601 Lind Avenue SW., Renton, WA 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANM–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide controlled airspace for The Dalles VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) approach segment from The Dalles VOR Tactical Air Navigation (VORTAC) to MUGGZ intersection (DLS 165R) which is presently outside of controlled airspace. The intent of this action would be to segregate aircraft operating in visual flight rules conditions from aircraft operating in instrument flight rules conditions. The area would be depicted on aeronautical charts for pilot reference. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

The Dalles, Oregon [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of The Dalles Municipal Airport (lat. 45°37'07" N., long. 121°09" W) and that airspace within 5-miles each side of The Dalles VORTAC (lat. 45°42'40" N., long. 121°05'59" W.) 184° radial extending from The Dalles VORTAC to 17.5-miles south of the VORTAC, and that airspace between The Dalles Vortac 206° radial clockwise to the 222° radial extending from the 5-mile radius of the Airport to the 11.5-mile radius of the Airport, and that airspace 5-miles either side of the 17.3-mile radius of the VORTAC between the 121° radial clockwise to the 206° radial: that airspace extending upward from 1,200 feet above the surface within 8-miles north and 6-miles south of The Dalles VORTAC 281° radial and 101° radial extending from 7-miles west to 14 miles east of the VORTAC, and within 5-miles north of the VORTAC 101° radial extending from 14-miles east to 23-miles east of the VORTAC, and that airspace within a 23-mile radius of the VORTAC extending clockwise from the 101° radial to the 272° radial, excluding the airspace within the Portland, OR, Transition Area.

Issued in Seattle, Washington, on July 12, 1991.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 91–17880 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CCGD5–91–29]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, South Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental proposed rule for the operation of the Dominion Boulevard drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 8.8, in Chesapeake, Virginia, by reducing the morning and evening rush hour restriction on drawbridge openings. This proposed change to the extent practical and feasible, is intended to provide for regularly scheduled drawbridge openings during those rush hour periods.

DATES: Comments must be received on or before September 12, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On August 6, 1990, the Coast Guard published a proposed rule (55 FR 31846) to evaluate bridge opening restrictions during the morning and evening rush hours for the Dominion Boulevard Bridge. The Commander, Fifth Coast Guard District also published the proposed rule as a public notice on August 7, 1990. Interested persons were given until September 20, 1990, to comment on the proposed rule that was published in the **Federal Register**. The comment period for the public notice ended September 20, 1990. A supplemental Public Notice was issued on September 17, 1990, with the comment period ending October 22, 1990.

This supplemental proposed rule reduces morning and evening rush hour restrictions proposed in August 1990, by one hour in the morning and one hour in the afternoon. It was determined that the proposed three hour restriction in the morning and evening was too harsh a closure for waterway traffic transiting on the Southern Branch of the Elizabeth River.

Public comments are requested on the reduced morning and evening rush hour restrictions to ensure that this proposal is reasonable. Persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for their comments. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and LT M.L. Lombardi, project attorney.

Discussion of Proposed Regulations

Concerned motorists requested that the regulations for the drawbridge across the Southern Branch of the Elizabeth River at mile 8.8 in Chesapeake, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. The proposed change would close the Dominion Boulevard Bridge to commercial, recreational, and public vessels Monday through Friday, except Federal holidays, from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. A provision that allows the draw to open on signal at all times for vessels in distress was made a part of the proposal. As a result of the proposed rule that was published and the public notice issued on August 7, 1990, written comments were received from the maritime community and the motoring public. The comments from the motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion and minor accidents. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on such generalized factors as economic impact concerns and safety. This supplemental proposal includes that provision, but reduces the hours of morning and evening rush hour restrictions on the bridge. The hours of restriction on the drawbridge were greatly reduced after the comments from the commercial marine industry were reviewed. It was determined that restricting the drawbridge openings three hours in the morning and three hours in the evening was too harsh; therefore, the hours of restriction the Coast Guard is proposing are 6:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays. These new proposed hours will reduce the risk of safety hazards on the water while still providing waterway users short delays along this waterway as opposed to the schedule originally proposed.

In deciding the issues in case, consideration was given to all views. However, it is felt that the needs of motorists who use the bridge warrant special consideration. The Coast Guard feels that imposition of this proposed rule, will not create an undue hardship on commercial interests since these companies can plan most of their vessel transits around the restricted hours of operation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.997(d) is redesignated as § 117.997(e) and new paragraph § 117.997(d) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(d) The draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except:

(1) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal Holidays, the draw will remain closed to all vessel traffic.

(2) The draw shall open on signal at all times for vessels in distress.

* * * * *

Dated: July 12, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91–17900 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–3978–5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") is proposing to add 22 new sites to the NPL. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule brings the number of proposed NPL sites to 23; 1,188 sites are on the NPL at this time, for a total of 1,211.

DATES: Comments must be submitted on or before September 27, 1991.

ADDRESSES: Mail comments in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS–230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. For Docket addresses and further details on their contents see Section I of the

"SUPPLEMENTARY INFORMATION" portion of this preamble.

FOR FURTBER INFORMATION CONTACT: Agnes Ortiz, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (0S–230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 920–9810 in the Washington, DC, metropolitan area).

SUPPPLEMENTARY INFORMATION:

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four migration pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL"). The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities, or "sites." [1]

[1] CERCLA section 105 (a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." For ease of reference, EPA uses the term "site" to refer to all "releases" and "facilities" on the NPL.

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598). The NPL contains 1,188 final sites at this time.

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 34 sites from the NPL, most recently the M&T Delisa landfill on March 21, 1991 (56 FR 11938). The 34 sites are listed below.

FINAL SITES DELETED FROM NPL BECAUSE NO FURTHER RESPONSE NEEDED JULY 1991

State	Site name	Location
AR	Cecil Lindsey	Newport.
AS	Taputimu Farm [1]	Island of Tutila.
AZ	Mountain View Mobile Home Estates (once listed as Globe) [1].	Globe.
CM	PCB Warehouse [1]	Saipan.
DE	New Castle Steel	New Castle County.
FL	Parramore Surplus	Mount Pleasant.
FL	Tri-city Oil Conservationist, Inc.	Tampa.
FL	Varsol Spill (once listed as part of Biscayne Aquifer).	Miami.
GA	Luminous Processes, Inc.	Athens.
IL	Petersen Sand & Gravel.	Libertyville.
IN	International Minerals & Chemical Corp. (Terre Haute East Plant).	Terre Haute.
IN	Poer Farm	Hancock County.
MD	Chemical Metals Industries, Inc.	Baltimore.
MN	Middletown Road Dump.	Annapolis.
MI	Gratiot County Golf Course.	St. Louis.
MI	Whitehall Municipal Wells.	Whitehall.
MN	Morris Arsenic Dump	Morris.
MS	Walcotte Chemical Co. Warehouses.	Greenville.
NC	PCB Spills [1]	243 Miles of Roads.
NJ	Cooper Road	Voorhees Township.
NJ	Friedman Property (once listed as Upper Freehold Site).	Upper Freehold Township.
NJ	Krysowaty Farm	Hillsborough.
NJ	M&T Delisa Landfill	Asbury Park.
OH	Chemical & Minerals Reclamation.	Cleveland.
PA	Enterprise Avenue	Philadelphia.
PA	Lehigh Electric & Engineering Co.	Old Forge Borough.

FINAL SITES DELETED FROM NPL BECAUSE NO FURTHER RESPONSE NEEDED JULY 1991—Continued

State	Site name	Location
PA	Presque Isle	Erie.
PA	Reeser's Landfill	Upper Macungie Township.
PA	Voortman Farm	Upper Saucon Township.
PA	Wade (ABM) (once listed as ABM-Wade).	Chester.
TT	PCB Wastes [1]	Pacific Trust Terrace.
TX	Harris (Farley Street)	Houston.
VA	Matthews Electroplating [1].	Roanoke County.
WA	Toftdahl Drums	Brush Prairie.

Number of sites deleted: 34.

[1] State top-priority.

In addition, 14 sites on the NPL are in the construction completion category (56 FR 5634, February 11, 1991), and fifteen others are awaiting final documentation before they can be formally placed in the construction completion category. The construction completion category includes sites awaiting deletion, sites awaiting first five-year review after completion of the remedial action, and sites undergoing long-term remedial actions at which the construction phase of the action is complete.

Thus, a total of 63 sites have been deleted, placed in the construction completion category, or are awaiting final documentation before being placed in the construction completion category.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 22 sites to the NPL. On May 9, 1991 (56 FR 21460), EPA proposed White Chemical Corp., Newark, New Jersey, on the basis of an ATSDR advisory. Final and proposed sites now total 1,211.

Public Comment Period

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this proposed rule. The dockets are available for viewing, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays.

Please contact individual Regional Dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203-2211, 617/573-5729.

Ben Conetta, Region 2, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, 212/264-6696.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-7904.

Beverly Fulwood, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA, 5 HSM-TUB 7, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214.

Bill Taylor, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740.

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551-7241.

Barbara Wagner, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444.

Lisa Nelson, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744-2347.

David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103.

The Headquarters docket contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed, by appointment only, in the appropriate Regional Docket or Superfund Branch Office. Requests for copies may be directed to the appropriate Regional Docket or Superfund Branch. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill* v. *Thomas,* 849 F. 2d 1516 (D.C. Cir. 1988). After considering the relevant comments received during the comment period, EPA will add sites to the NPL if they meet requirements set out in the NCP and any applicable listing policies.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 56 FR 5603, February 11, 1991.) Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments received during the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are

identifiable at the time of listing, serves as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the final NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). As of April 1991, EPA has conducted 1,940 removal actions, 489 of them at NPL sites. Information on removals is available from the Superfund Hotline.

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

EPA will not necessarily fund remedial response actions in the same order as a sites' HRS scores, since the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first. Thus, EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) that typically follows listing.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with subpart E of the NCP (55 FR 8839, March 8, 1990). After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.425(b)(1). Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge regarding the extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability nor define the geographic extent of a release, a listing need not be amended if further research into the extent of the contamination reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

III. Contents of This Proposed Rule

Table 1 identifies 19 non-Federal sites and Table 2 identifies 3 Federal facility sites proposed for the NPL in this rule. Both tables follow this preamble. All are proposed based on HRS scores of 28. 50 or above. Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the NPL. For example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Since promulgation of the original NPL (48 FR 40660, September 8, 1983), EPA has arranged the NPL by rank based on HRS Scores and presented sites on the NPL in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

EPA is proposing an alternative, and what it believes to be more useful, format for presenting NPL sites in both proposed and final rules. Proposed and final rules would present sites in alphabetical order by State and by site name within the State. Once a year the entire NPL, appendix B, would be published. The following table presents the 22 sites in this rule in the proposed format.

NATIONAL PRIORITIES LIST, PROPOSED SITES BY STATE (PROPOSED ALTERNATIVE)

Site name	City/county	Notes [1]
California:		
Del Amo Facility	Los Angeles	
Stoker Co	Imperial	
Westminster Tract #2633.	Westminster	
Florida:		
Broward County—21st Manor Dump.	Fort Lauderdale	
Illinois:		
Ottawa Radiation Areas.	Ottawa	
Kentucky:		
National Electric Coil Co./ Cooper Industries.	Dayhoit	
National Southwire Aluminum Co.	Hawesville	
Nebraska:		
Cleburn Street Well.	Grand Island	
Sherwood Medical Co.	Norfolk	

NATIONAL PRIORITIES LIST, PROPOSED SITES BY STATE (PROPOSED ALTERNATIVE)—Continued

Site name	City/county	Notes [1]
New Hampshire:		
New Hampshire Plating Co.	Merrimack	
New York:		
Li Tungsten Corp.	Glen Cove	
Pennsylvania:		
Crossley Farm	Hereford Twp.	
Rodale Manufacturing Co., Inc.	Emmaus Borough	
Rhode Island:		
West Kingston Town Dump/URI Disposal Area.	South Kingstown	
South Dakota:		
Annie Creek Mine Tailings.	Lead	
Utah:		
Petrochem Recycling Corp./ Ekotek, Inc.	Salt Lake City	
Washington:		
Moses Lake Wellfield Contamination.	Moses Lake	
Tulalip Landfill	Marysville	
Vancouver Water Station #4 Contamination.	Vancouver	

[1] Column reserved for State top-priority or ATSDR Health Advisory Sites.

NATIONAL PRIORITIES LIST, PROPOSED FEDERAL FACILITY SITES BY STATE (PROPOSED ALTERNATIVE)

Site name	City/county
Hawaii:	
Pearl Harbor Naval Complex.	Pearl Harbor.
Texas:	
Pantex Plant (USDOE)	Pantex Village.
Washington:	
Hamilton Island Landfill	North Bonneville.

EPA is proposing this change because as the NPL has grown over the years, listing sites by rank has made it increasingly difficult for users of appendix B to find individual sites. Almost all public requests for the NPL ask for a list organized by State, rather than by site, rank and score. Information on rank or actual HRS score still will be provided upon request. (Informal requests are encouraged since they generally take less time than requests under the Freedom of Information Act.)

Further, EPA is considering whether to retain in the preamble (but not appendix B) some form of identification by rank of each site included in the rule. Presentation of the NPL in groups of 50 often has been confusing to the public, and has not conveyed the significance of rankings, as EPA had intended. For example, sites having the same scores have different ranks, and sometimes are even in different groups. In addition, State top priority sites are placed in the top 100 sites, as required by CERCLA, even though some of their scores are lower than many sites ranked below them. However, some information on relative ranking of sites may be useful to the public. To eliminate some of the concerns with the present method of ranking, EPA is considering rankings in larger groups, possibly even as top, middle, or low thirds of the NPL.

The public is invited to comment on these proposed changes in NPL format, and on whether rankings are useful and should be continued, and in what form, as well as to provide any further suggestions on ways to improve the clarity and usability of Appendix B.

Statutory Requirements

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings, the latest being February 11, 1991 (56 FR 5598).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that sites subject to RCRA subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in past Federal Register discussions (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add two sites to the NPL, New Hampshire Plating Co. in Merrimack, New Hampshire, and Petrochem Recycling Corp./Ekotech, Inc., in Salt Lake City, Utah, that are subject to RCRA Subtitle C corrective action authorities. Material has been placed in the public docket for the Petrochem Recycling Corp./Ekotech, Inc. site confirming that the owner is bankrupt. Regarding the New Hampshire Plating Co. site, even though the owner has not formally invoked the bankruptcy laws, available documentation indicates that the company assets cannot cover a current State lien on the property for response action, much less address any new expenses which would be incurred in remediating the site. A moredetailed discussion of this issue as well as supporting documentation is available in the public docket for this site. Since New Hampshire Plating Co. is unable to finance corrective action, the site meets the NPL/RCRA policy for placement on the NPL.

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

In this rule, the Agency is proposing to add three Federal facility sites to the NPL.

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites to the NPL. EPA believes that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact

analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes that the anticipated economic effects related to proposing to add these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

This proposed rulemaking is not a "major" regulation because it does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites in this rule. The proposed listing of a site on the NPL may be followed by a search for potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all of the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State's share of site cleanup costs has been amended by CERCLA section 104. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100 percent of the costs of the RI/FS and remedial planning, and 90 percent of the costs of the remedial action, leaving 10 percent to the State. For publicly-operated sites, the State's share is at least 50 percent of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in start-up costs according to the ownership criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes all O&M costs.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial design	750,000
Remedial action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars
[2] Includes State cost-share
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10 percent discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10 percent of remedial actions and 10 percent of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50 percent of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90 percent of the non-Federal sites proposed for the NPL in this rule will be privately-owned and 10 percent will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately $60 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25 percent of sites. Using this estimate, State O&M costs would be approximately $54 million.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: The volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at these sites.

Associated with the costs are significant potential benefits and cost

offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. As stated above, proposing sites for the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's proposed inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses nor estimate the number of small businesses that might also be affected.

The Agency does expect that CERCLA actions could significantly affect certain industries, and firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Table 1.—National Priorities List, Proposed Update #11 Sites (By Group)

NPL Gr [1]	State	Site name	City/county
1	CA	Stoker Co	Imperial.
1	UT	Petrochem Recycling Corp./Ekotek, Inc.	Salt Lake City.
4	FL	Broward County—21st Manor Dump.	Fort Lauderdale.
4	WA	Tulalip Landfill	Marysville.
5	IL	Ottawa Radiation Areas.	Ottawa.
5	KY	National Electric Coil Co./ Cooper Industries.	Dayhoit.
5	KY	National Southwire Aluminum Co.	Hawesville.
5	NE	Cleburn Street Well.	Grand Island.
5	NE	Sherwood Medical Co.	Norfolk.
5	NH	New Hampshire Plating Co.	Merrimack.
5	NY	Li Tungsten Corp.	Glen Cove.
5	PA	Rodale Manufacturing Co., Inc.	Emmaus Borough.
5	RI	West Kingston Town Dump/ URI Disposal Area.	South Kingstown.
5	SD	Annie Creek Mine Tailings.	Lead.
5	WA	Moses Lake Wellfield Contamination.	Moses Lake.
5	WA	Vancouver Water Station #4 Contamination.	Vancouver.
6	CA	Del Amo Facility	Los Angeles.
15	CA	Westminster Tract #2633.	Westminster.
21	PA	Crossley Farm	Hereford Township.

Number of sites proposed for listing: 19.
[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

Table 2.—National Priorities List, Federal Facility Sites, Proposed Update #11 (by Group)

NPL Gr [1]	State	Site name	City/county
1	HI	Pearl Harbor Naval Complex.	Pearl Harbor.
4	TX	Pantex Plant (USDOE).	Pantex Village.
4	WA	Hamilton Island Landfill (USA/ COE).	North Bonneville.

Number of Federal facility sites proposed for listing: 3.
[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243, E.O. 12580, 52 FR 2923.

Dated: July 19, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91–17794 Filed 7–26–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 560 and 572

[Docket No. 91–20]

Exemption of Certain Marine Terminal Services Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; Extension of reply date.

SUMMARY: On May 15, 1991, the Federal Maritime Commission published a notice of proposed rulemaking (56 FR 22384) which proposes to amend 46 CFR parts 515, 560 and 572 to conditionally exempt, pursuant to section 35 of the Shipping Act, 1916, and section 16 of the Shipping Act of 1984, certain marine terminal services arrangements from certain agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984 and the Commission's implementing regulations thereunder, and to conditionally discontinue the Commission's tariff filing requirements for such matters. The notice of proposed rulemaking required the filing of comments by July 15, 1991, and replies to comments by August 13, 1991. The American Association of Port Authorities ("AAPA") has requested that time for filing replies be extended to August 31, 1991, to provide ample time to review and respond to comments. The Commission has determined to grant AAPA's request.

DATES: Replies to comments due on or before August 31, 1991.

ADDRESSES: Send an original and fifteen copies of replies to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573–0001, (202) 523–5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17824 Filed 7-26-91; 8:45 am]

BILLING CODE 6730-01-M

46 CFR Parts 550, 580, and 581

[Docket No. 90-23]

Automated Tariff Filing and Information System ("ATFI") Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Inquiry

AGENCY: Federal Maritime Commission.

ACTION: Notice of availability of Third Interim Report.

SUMMARY: The Federal Maritime Commission's Third Interim Report resolves remaining issues set forth in the August 1990 Notice of Inquiry, except for the required use of the Harmonized System of Commodity Coding and implementation plan (transition to full-scale operation). Further comments are invited on these two issues.

DATES: Written comments on # 1, Harmonized System, and # 23, Transition Plan, (original and 15 copies) must be submitted by August 26, 1990, and served on other parties to the proceeding.

Availability of Third Interim Report: July 23, 1991.

ADDRESSES: Submit written comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573. A copy of the Service List in this proceeding, as well as a copy of the Third Interim Report, may also be obtained through the Secretary.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5800.

SUPPLEMENTARY INFORMATION: On August 1, 1990, the Federal Maritime Commission issued an ATFI Notice of Inquiry (55 FR 31199, August 1, 1990), requesting public comment on some of the basic features being considered for ATFI. On December 26, 1990, after consideration of the comments received, the Commission issued an Interim Report with an appended ATFI Batch Filing Guide (with transaction sets) (56 FR 668, January 8, 1991). On March 25, 1991, the Commission issued a Second Interim Report (56 FR 13101, March 29, 1991) which responds to concerns of commercial Electronic Tariff Filers, affirms that the Commission will not furnish batch filing software, and reiterates that the Batch Filing Guide is all that is necessary for any firm to develop its own software. The Second Interim Report also establishes a tentative schedule for certification of such privately-developed batch filing software, the window for which will begin in early November 1991 and extend into early 1992, when ATFI goes into full-scale operation.

The July 23, 1991, Third Interim Report resolves remaining issues set forth in the Notice of Inquiry, except for the required use of the Harmonized System of Commodity Coding, and proposes an implementation plan for transition to full-scale operations, upon which comments are invited. Additionally, the Third Interim Report reflects a recent iteration of the U.S. House of Representatives' policy promoting the use of algorithms in ATFI and making the "bottom-line" functionality available to all public users.

A proposed rule, with opportunity for public comments, is being prepared for publication in the **Federal Register**.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17823 Filed 7-26-91; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-109]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: With this document, we give notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the North Prairie Room of the Holiday Inn-Gateway Center, US Highway 30 and Elwood Drive, Ames, Iowa 50010, August 27 through August 29, 1991. Sessions will be held from 1 p.m. to 5 p.m. on August 27, from 8 a.m. to 5 p.m. on August 28, and from 8 a.m. to 12 noon on August 29.

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) advises the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Tentative topics for discussion at the upcoming meeting will include, among other things, the expectations of the Committee for 1992, emergency preparedness goals for the Animal and Plant Health Inspection Service (APHIS), and a review of APHIS plans to deal effectively with outbreaks of foreign diseases. A representative of the Agricultural Research Service will report on that agency's foreign animal disease research activities. The Committee will also develop recommendations and prepare comments on control and eradication guides for foot-and-mouth disease and other foreign animal diseases.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussion. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. M.A. Mixson at the above address, or may be filed at the meeting.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 24th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-17874 Filed 7-26-91; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Rayburn Country Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction and operation by Rayburn Country Electric Cooperative, Inc. (RCEC), of the Mineola-Canton Tap and Explorer-Overton 138 kV Transmission Lines located in Anderson, Cherokee, Henderson, Kaufman, Rusk, Smith and Van Zandt Counties, Texas.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No significant Impact (FONSI) with respect to the construction and operation of the Mineola-Canton tap and Explorer-Overton 138 kV Transmission Line Project.

FOR FURTHER INFORMATION CONTACT: .Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, Room 0207, Agriculture South Building, Washington, DC 20250, telephone: (202) 382-8848. Copies of the Environmental Assessment (EA) and FONSI can be reviewed at REA at the address provided above or at the office of Rayburn Country Electric Cooperative, Inc., 980 Sids Road, Rockwall, Texas 75087.

SUPPLEMENTARY INFORMATION: RCEC is a power supply cooperative that is not an REA borrower. It supplies the wholesale power requirements of its six member distribution cooperatives that are REA borrowers. RCEC is not seeking financing assistance from REA for the proposed facilities. However, this arrangement requires certain REA actions with respect to RCEC's proposed plan of power supply. The project will allow RCEC to interconnect its facilities with the Southwestern Electric Power Company (SWEPCO) and to more economically serve its member systems.

REA, in accordance with its environmental policies and procedures, required that Rayburn Country Electric Cooperative, Inc. (RCEC), develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from Federal, State and local agencies, has been adopted as REA's EA for the project in accordance with 7 CFR 1794.83. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. RCEC, in conjunction with SWEPCO, plans to construct the proposed 209.1 km (130.0 mile) transmission line project in seven segments using primarily wood pole H-frame structures. Detailed routing information can be obtained by contacting RCEC at the above address.

The first segment will be approximately 34.4 km (21.5 miles) in length and connect SWEPCO's Mineola Substation located northeast of Mineola, Texas, and RCEC's existing Canton Tap Switching Station located approximately 8.8 km (5.5 miles) southwest of Grand Saline, Texas. SWEPCO will construct a

24.8 km (15.5 mile) section of this segment.

The second segment will be approximately 10.5 km (6.5 miles) in length and will connect RCEC's proposed Explorer Switching Station located approximately 16.9 km (10.5 miles) southwest of Canton, Texas, with Kaufman County Electric Cooperative's (KCEC) proposed Mabank Switching Station located approximately 8.0 km (5.0 miles) north of Mabank, Texas.

The third segment will be approximately 25.7 km (16.0 miles) in length and connect KCEC's proposed Mabank Substation site with New Era Electric Cooperative's (NEEC) existing Cedar Substation located approximately 4.3 km (2.7 miles) south of Eustace, Texas.

The fourth segment will be approximately 18.5 km (11.5 miles) in length and connect NEEC's Cedar Substation and NEEC's existing Walton Substation.

The fifth segment will be approximately 13.7 km (8.5 miles) in length and connect NEEC's Walton Substation and NEEC's proposed Barton Chapel Substation site located approximately 7.2 km (4.5 miles) northeast of Murchison, Texas.

The sixth segment will be approximately 18.5 km (11.5 miles) in length and connect NEEC's Barton Chapel Substation site and NEEC's Antioch Switching Station located in eastern Henderson County.

The seventh segment will be approximately 63.0 km (39.0 miles) in length and connect NEEC's existing Coffee Substation located 6.4 km (4.0 miles) northeast of Frankston, Texas, with SWEPCO's existing Overton Switching Station located south of Overton, Texas.

Alternatives examined for the proposed project included no action and alternative routes. The "no action" alternative would also allow RCEC to meet its present and future needs. REA determined that the proposed project will meet RCEC's existing and future needs more effectively and economically and will have no significant impact on the environment.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, RCEC and SWEPCO published notices and advertisements in the Palestine Herald Press, Jacksonville Progress, Athens Daily Review, Terrell Tribune, Henderson Daily News, Tyler Courier-Times-Telegraph, Canton Herald, Winnsboro News, Grand Saline Sun and the Mineola Monitor. The newspapers have a general circulation in Anderson, Cherokee, Henderson, Kaufman, Rusk, Smith and Van Zandt Counties, Texas. The notices described the project, announced the availability of the BERs for review, and gave addresses where comments could be sent.

The public was given at least 30 days to respond and submit comments. No responses were received by RCEC.

As a result of its independent evaluation, REA concluded that its approval to allow RCEC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA hereby reaches a Finding of No Significant Impact with respect to the proposed project in accordance with 7 CFR part 1794.

Dated: July 26, 1991.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 91–17922 Filed 7–26–91; 8:45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will be held from 9 a.m. until 3 p.m. on Wednesday, August 28, 1991, at the Sheraton Cleveland City Center, 777 St. Clair Avenue, Cleveland, Ohio 44114. The purpose of this meeting is to orient members, meet Midwestern Regional staff, discuss civil rights issues, and plan future activities.

Persons desiring additional information should contact Committee Chairperson, Lynwood Battle, at (513) 983–2843 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–17844 Filed 7–26–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Gaylord Foundry Equipment, Inc	703 S. Cottage, Independence, MO 64051	06/14/91	Enameled cast iron household articles.
Plymouth Rubber Company, Inc	104 Revere Street, Canton, MA 02021	06/14/91	Vinyl and electrical tape.
Iva Manufacturing Company	201 East Broad Street, Iva, SC 29655	06/18/91	Ladies blouses and ladies slacks.
Ruggeri Manufacturing, Inc	35 Industrial Park Circle, Rochester, NY 14624–2403.	06/18/91	Cameras, carousel trays, stapler bars and heater motors.
American Modern Metals Corporation	25 Belgrove Drive, Kearny, NJ 07032	06/24/91	Drawn aluminum tubing, rod, bar and extruded shapes for baseball and softball bats.
King Brothers Industries	27781 Avenue Hopkins, Valencia, CA 91355	06/24/91	Plastic plumbing fittings.
Act II/B.b.A. John Roberts Limited	Biddeford Industrail Park, Biddeford, ME 04005	06/25/91	Men's suits and sportcoats and women's coats.
Kennetex, Inc	740 Cypress Street, Box 616, Kennett Square, PA 19348.	06/25/91	Synthetic spun yarn.
Bunton Company	4501 E. Indian Trail, Louisville, KY 40213	06/26/91	Gasoline powered commercial grass cutting mowers (riding and walk-behind).

Firm name	Address	Date petition accepted	Product
Triangle Brass Manufacturing Company, Inc.	3528 Emery Street, Los Angeles, CA 90023	06/27/91	Door closers, parts, stops, pulls, and kick plates.
Westin-Nielsen Corporation	4301 White Bear Parkway, St. Paul, MN 55110	06/27/91	Upholstered chairs with wooden frames, with wood or metal swivel base.
H.M. Quackenbush, Inc	220 Prospect Street, Herkimer, NY 13350	07/01/91	Nutcrackers and nutpicks, machined, plated and assembled from steel.
Sequoia Industries, Inc	11813 Hubbard Road, Livonia, MI 48150	07/01/91	Machined parts for motor vehicle clutches.
Northeast Knitting Mills, Inc	69 Alden Street, Fall River, MA 02723	07/01/91	Sweaters: men's and women's cotton, knit and other blends of fibers.
Adolph Meller Company	120 Corliss Street, Providence, RI 02904	07/03/91	Optical components known as sapphires.
Aerolloy, Inc.	42-21 Ninth Street, Long Island City, NY 11101	07/05/91	Stainless steel flanges, couplings and gear blanks.
Paul Krone Diecasting Company	6605 W. Fullerton Avenue, Chicago, IL 60635	07/05/91	Die cast parts of aluminum & zinc, for automobile coolant systems, transmission & steering systems.
ASBK, Inc. DBA/Marion Rohr Corporation	152 Madison Avenue, New York, NY 10016-6714.	07/05/91	Ladies panties made of nylon/lycra lace.
Sherco Enterprises	627 Field Street, Johnson City, NY 13790	07/05/91	Electrical cable, harness assemblies used for machines and computers.
Top Switch Manufacturing Company	1925 8th Avenue, Seattle, WA 98101	07/05/91	Jackets.
Scott McLean, Inc.	924 W. Main St./P.O. Box 2140, Bowling Green, KY 42101.	07/05/91	OEM parts for brush industry, tool and brush bodies of dimension lumber and chairs.
Buffalo Brake Beam Company	400 Ingham Avenue, Lackawanna, NY 14218	07/08/91	Brake systems for railroad cars.
Sebago Woodcrafters, Inc	Route 117, Bucktield, ME 04220	07/08/91	Wood furniture.
Saf-T-Bak, Inc	201 Cayuga Avenue, Altoona, PA 16603	07/09/91	Insulated coats and pants, coveralls and vests.
Bel Air Tool Corporation	110 Byfield Street, Warwick, RI 02888	07/09/91	Costume earrings and belt buckle assemblies.
Planto Furniture Mfg. Co., Inc.	307 Indiana Street, San Antonio, TX 78210	07/09/91	Wood upholstered office chairs.
Etta Industries, Inc.	4755 Walnut Street, Boulder, CO 80301	07/11/91	Ballasts for lighting.
Kearney & Trecker Corporation	11000 West Theodore Trecker Way, Milwaukee, WI 53214.	07/11/91	Machining centers without automatic tool changers, and multiple stations.
Staodyn, Inc.	1225 Florida Avenue, Box 1379, Longmont, CO 80502-1379.	07/11/91	Tens—transcutaneous electrical nerve stimulators.
Wondermaid, Inc	1520 Washington Avenue, St. Louis, MO 63103	07/12/91	Slips (full and half) pattern design, cut and sew man-made fibers.
White Lift Truck Parts & Mfg. Co., Inc.	8600 Jefferson Highway, Osseo, MN 55369	07/15/91	Self-propelled fork lift trucks, electric, gasoline, propane or diesel engines and parts.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 23, 1991.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 91-17943 Filed 7-26-91; 8:45 am]

BILLING CODE 3510-24-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 743.

SUMMARY: On Friday, March 29, 1991, notice was published in the **Federal Register** (56 FR 13128) that an application (P167F) had been filed by Dr. Frank T. Awbrey, Hubbs Sea World Research Institute, 1700 South Shores Road, San Diego, California 92107, to take by harassment up to 100 killer whales (*Orcinus orca*), as many as 50 times each, all sizes, ages, sexes, and reproductive conditions. The research involves identification of acoustical cues likely to be used by the killer whales to locate a commercial fishing boat retrieving a longline with sablefish and to find ways to make those sounds less audible to the whales. Duration of the research is two years in Prince William Sound, Alaska, especially in Knight Island Passage.

Notice is hereby given that on July 17, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued a permit for the above research activities subject to the Special Conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC1, room 7320, Silver Spring, Maryland 20910 (301/427-2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802 (907/586-7221); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: July 17, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-17825 Filed 7-26-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The following inventions are owned by the United States Government and are available for licensing in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

United States Patent Application Serial Number 7-429,326, "Polymer Bead Containing Immobilized Metal Extractants", is available for licensing to one party co-exclusively with existing licensees. It disclosed spherical polymeric beads having internal ore structures containing extractant material capable of sorbing toxic metals, a process for producing such beads and a method for removing toxic metal wastes dissolved in dilute aqueous streams.

United States Patent Number 4,053,776 (Patent Application Serial Number 5-689,757), "Sub-Micron Particle Detector" which discloses an instrument to detect submicron particles by charge-transfer attachment. The instrument is made up of a charging chamber with two concentric cylindrical electrodes, a remote third collector electrode, and a pump to force ambient air through the charging chamber and into the collection electrode. The innermost electrode of the charging chamber is supplied with a radioactive material having a gold foil covering. This material can create a small bipolar region symmetrical to the inner electrode where primary ionization takes place. Positive ions created in this region move to the large outside unipolar region to attach themselves to sub-micron particles. These charged particles are then forced from the charged chamber at which time they may either impinge on the collection electrode to create a measurable axial current or the particles may enter a size discrimination chamber. Should they enter this discrimination chamber, particles of a given mobility or size are collected by two additional concentric cylindrical electrodes.

A copy of the above patent application may be purchased specifying the serial number, by writing the National Technical Information Service at 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the National Technical Information Services Sales Desk at (703) 487-4650 or, outside Virginia, 800-553-NTIS. A copy of the above patent may be obtained from the Commissioner of Patents, United States Patent and Trademark Office, Washington, DC 20231.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology-Patent Licensing, United States Department of Commerce, Post Office Box 1423, Springfield, Virginia 22151.

In all communications to NTIS concerning the above inventions, please refer to the related patent application serial number written above.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology.

[FR Doc. 91-17847 Filed 7-26-91; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

[Docket No. 910235-1173]

Termination of Status of International Depositary Authority Under Budapest Treaty

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that In Vitro International, Inc.'s status as an international depositary authority is terminated effective September 25, 1991.

ADDRESSES: Questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: H. Dieter Hoinkes, Office of Legislation and International Affairs, (703) 557-3065.

SUPPLEMENTARY INFORMATION: Since November 30, 1983, In Vitro International, Inc. (IVI) of Linthicum, Maryland, has been recognized as an international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

The Patent and Trademark Office has received a letter from Dr. Rex A. D'Agostino, President of IVI, dated May 24, 1991, stating that IVI can no longer continue to perform its functions as an international depositary authority under the Budapest Treaty.

By letter dated June 25, 1991, the Patent and Trademark Office has notified the Director General of the World Intellectual Property Organization that "the United States withdraws its declaration of assurances made on behalf of IVI on September 9, 1983". As a consequence, the termination of the status of IVI as an international depositary authority takes effect on September 25, 1991.

All deposits stored with IVI under the Budapest Treaty were transferred on June 20, 1991, to a substitute authority, which is the American Type Culture Collection (ATCC), 12301 Parklawn Drive, Rockville, Maryland, 20852, (Telephone No. (301) 881-2600). All mail or other communications addressed to IVI regarding those deposits, including all files and other relevant information, have also been transferred to ATCC. In its capacity as a substitute authority, ATCC has agreed to store all deposits transferred from IVI for an initial period of not less than three months from July 5, 1991, the date of first notice in the **Federal Register** of IVI's termination as an international depositary authority. Patent owners and applicants who wish to preserve their date of original deposit must contact ATCC by October 5, 1991, to make arrangements to pay ATCC's fee for continued maintenance and storage of their deposits past the initial storage period. ATCC will not accept responsibility for continued storage of deposits in respect of which depositors have failed to make appropriate arrangements by October 5, 1991.

For further information, contact H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231; telephone (703) 557-3065.

Dated: July 23, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-17834 Filed 7-26-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determinations; Excess Defense Articles (4 LCUs, 20 OV-10 Spare Engines and Support Equipment)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this document provides notification that during Fiscal Year 1991 the United States Government will transfer to the Government of Colombia excess support equipment for

OV–10 aircraft. The total value of the items is estimated to be $35,612. The original acquisition value of the items was $71,333.

This action is required to ensure that Colombia is afforded the opportunity of obtaining these needed items at no cost. The items are needed to enable the military forces in Colombia to participate in a comprehensive national anti-narcotics enforcement program, by conducting activities within Colombia to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these items will be used primarily in support of anti-narcotics activities.

The Director, Defense Security Assistance Agency, Lt. Gen. Teddy G. Allen, certifies that the items are needed by Colombia and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: July 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17857 Filed 7–26–91; 8:45 am]

BILLING CODE 3810–01–M

Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces

ACTION: Notice of Task Force Meeting.

SUMMARY: The Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces will meet in closed session on 21–22 August 1991 from 0900 until 1700 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Joint Defense Policy Board/Defense Science Board Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition with independent, informed advice and opinion concerning major matter relating to nonstrategic nuclear force policy and acquisitions. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Joint Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: July 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17858 Filed 7–26–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Availability of Patent

AGENCY: Office of the Judge Advocate General, Intellectual Property Law Division, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent. Any licenses granted shall comply with U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issued date
4,978,286	Variable Cycle Engine Passive Mechanism	12/18/90

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Earl T. Reichert, Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, JALS-IP, Falls Church, VA 22041–5013, (703) 756–2623.

SUPPLEMENTARY INFORMATION: Using centrifugal force to deploy propeller blades, the Variable Cycle Engine Passive Mechanism would allow gas turbine engines to smoothly transition between turboprop and turbojet modes of operation, taking advantage of the fuel economy afforded by turboprop operation and the speed afforded by the turbojet.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–17841 Filed 7–26–91; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Amend a record system

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on August 28, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100. Telephone (202) 274–6234 or Autovon 284–6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: July 23, 1991.

L.M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

System name:

Defense Manpower Data Center Data Base (56 FR 19838, April 30, 1991)

Changes:

* * * * *

Categories of individuals covered by the system:

Insert between the sixth and seventh paragraph a new paragraph "All Federal Civil Service employees."

Categories of records covered by the system:

Add a new paragraph between the existing sixth and seventh paragraphs "Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract portion of the OPM/GOVT–l, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. These records provided by OPM for approved computer matching"

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In the eleventh paragraph, second line, replace the word "regular" with "certain," and delete the word "officer."

Add a new paragraph after the twenty-first paragraph "To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustment of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions."

In the thirtieth paragraph, second line, replace the word "regular" with "certain," and delete the word "officer."

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93920–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93920–5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; civilian employees of the Federal Government; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; and home and work addresses.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax ID of providers or potential providers of care.

Selective Service System registration data.

Department of Veterans Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract portion of the OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational

series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; Pub. L. 95–452, as amended (Inspector General Act of 1978); and Executive Order 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Veterans Affairs (DVA), Statistical Policy and Research Office, Office of Information Management and Statistics, DVA Management Sciences Division to provide military personnel employment and pay data for the purpose of selection samples for surveys asking veterans about the use of veteran benefits and satisfaction with DVA services, and to validate eligibility for DVA benefits; and to analyze the cost to the individual of military service under the Veteran's Group Life Insurance program.

To the Department of Veterans Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (title 10 U.S.C., chapter 106—Selected Reserve and title 38 U.S.C., chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 30063008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the "guaranteed minimum" disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O.

11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS), Office of the Inspector General, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Public Law 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Social Security Administration (SSA), Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

To the Bureau of Supplemental Security Income, SSA, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DoD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states.

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system

SAFEGUARDS:

W.R. Church Computer Center—Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veterans Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–17859 Filed 7–26–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TQ91–3–16–001 and TF91–11–16–001]

National Fuel Gas Supply Corp.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 19, 1991, National Fuel Gas Supply Corporation ("National") submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 1, 1991:

Substitute Tenth Revised Sheet No. 5
Substitute Eleventh Revised Sheet No. 5
First Revised Sheet No. 102

National states that the purpose of this filing is to comply with the Commission's June 21, 1991 Letter Order at Docket No. 91–3–16–000 directing that National revise the GeneralTerms and Conditions to its FERC Gas Tariff, Second Revised Volume No. 1, and to describe its method of computing the current adjustment for the demand adjustment rate component in its Purchased Gas Adjustment ("PGA"). National further states that its filing is to comply with the Commission's directive that National track through its PGA the most recent rates filed by its pipeline suppliers.

National states that copies of this filing were served on its jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17908 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–10–17–000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 17, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Twelfth Revised Sheet No. 72
Twelfth Revised Sheet No. 73
Eleventh Revised Sheet No. 74
Twelfth Revised Sheet No. 75

Texas Eastern states that these tariff sheets are being filed to reflect changes in take-or-pay costs allocated to Texas Eastern by Texas Gas Transmission Corporation (Texas Gas); On March 22, 1991 Texas Gas filed a settlement intended to resolve and terminate its take-or-pay recovery proceedings filed pursuant to Order Nos. 500 and 528, *et al.* On May 1, 1991, the Commission issued an order approving that settlement. On May 24, 1991, Texas Gas filed tariff sheets in compliance with the May 1, 1991 order which revised the take-or-pay costs allocated to Texas Eastern by Texas Gas for its take-or-pay costs paid directly to producers.

The proposed effective date of the tariff sheets listed above is August 17, 1991.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91–72, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17909 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL90-12-004]

Cajun Electric Power Cooperative, Inc. v. Louisiana Power & Light Co.; Filing

July 23, 1991

Take notice that on July 5, 1991, Cajun Electric Cooperative, Inc. tendered for filing its compliance refund report pursuant to the Commission's order issued on May 23, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17864 Filed 7-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-91-199-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Colorado Interstate Gas Company ("CIG"), on July 19, 1991, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 61G11-2

CIG states that the above-referenced tariff sheet is being filed to implement recovery of Buyout-Buydown costs incurred by CIG as a result of the settlement of contract claims in litigation as of March 31, 1989, and other claims settled prior to December 31, 1990, in conformance with the procedures reflected in CIG's Commission-approved tariff.

CIG states that, pursuant to the procedures established in its tariff and filings in Docket Nos. RP-98, RP89-133, and RP90-95, CIG will allocate its Buyout-Buydown costs between its jurisdictional and nonjurisdictional customers, absorb 50 percent of the jurisdictional portion of the Buyout-Buydown costs, and recover 50 percent of such costs through fixed surcharges applicable to its jurisdictional firm sales customers. CIG states that the total and the jurisdictional portion of the Buyout-Buydown costs related to this filing are $5,052,213 and $4,772,983, respectively. Therefore, CIG is proposed to recover $2,386,492 from its affected jurisdictional firm sales customers.

CIG has requested that the Commission accept this filing, to become effective August 1, 1991.

CIG states that copies of the filing were served upon all of its affected firm sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party mule file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17916 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1014-006]

Pan Gas Storage Company, d.b.a. Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Pan Gas Storage Company, d.b.a. Southwest Gas Storage Company (Southwest), on July 11, 1991 tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1. The proposed effective date of these tariff sheets is January 20, 1991.

Southwest states that these tariff sheets are being filed in accordance with Commission's Order granting rehearing issued July 2, 1991 in Docket No. CP90-1014-001 and with section 154 of the Commission's Regulations, and reflect changes to Southwest's tariff of Rate Schedules ISS and FSS, which provide for interruptible and firm open-access nondiscriminatory storage pursuant to section 7(c) of the Natural Gas Act.

Southwest states that copies of this letter and enclosure have been served on all parties to this proceeding and interested state agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17917 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-111-000]

East Tennessee Natural Gas Co.; Informal Conference

July 23, 1991.

Take notice that an informal conference will be convened in this proceeding on August 8, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. The purpose of the conference is to discuss whether any revision to the procedural schedule established in this proceeding at the prehearing conference of June 19, 1991, is necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208–0740 or Irene E. Szopo at (202) 208–1602.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17867 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–498–000]

Entergy Power, Inc.; Filing

(July 23, 1991.)

Take notice that on June 21, 1991, Entergy Power, Inc. (EPI) tendered for filing a Letter Agreement for the sale of replacement to the Tennessee Valley Authority.

EPI requests an effective date of June 1, 1991 for the Letter Agreement. EPI requests waiver of the Commission's notice requirements under § 35.11 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17862 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–516–000]

Puget Sound Power & Light Co.; Filing

July 23, 1991.

Take notice that Puget Sound Power & Light Company (Puget) on July 1, 1991, tendered for filing a proposed Supplement No. 9 to the General Transfer Agreement between Puget and the United States of America, Department of Interior acting by and through the Bonneville Power Administrator ("Bonneville") Contract No. 14–13–001–11487. (Puget Sound Power & Light Company Supplement No. 9 to Rate Schedule FPC No. 16.) The proposed Supplement relates to certain transmission service to the Town of Sumas which was previously provided under Contract No. 14–03–64458 between Puget and Bonneville (FPC Rate Schedule No. 11). In addition, Puget tendered for filing a proposed Revision No. 1 to Supplement No. 9. The proposed changes would increase revenue from jurisdictional service under this schedule from $7,844 for the twelve months prior to November 30, 1987 to $73,489 for the twelve months immediately thereafter, and from $71,044 for the twelve months immediately thereafter.

These changes in the rate schedule are necessary to reflect the costs of providing this transmission service during the specified periods. Puget and Bonneville have agreed upon an effective date for original Supplement No. 9 of November 30, 1987 and an effective date of January 31, 1989 for Revision No. 1.

Copies of the filing were served upon Bonneville.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17863 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–540–000]

Nantahala Power & Light Co.; Filing

July 23, 1991.

Take notice that on July 8, 1991, Nantahala Power & Light Company (Nantahala) tendered for filing the following documents:

(1) A Partial Settlement Agreement dated July 8, 1991;

(2) An "Explanatory Statement and References in Support of Partial Settlement Agreement"; and

(3) A draft "Order Accepting Partial Settlement Agreement."

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17860 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–530–000]

Northeast Empire Limited, Limited Partnership # 2; Filing

July 23, 1991.

Take notice that on July 18, 1991, Northeast Empire Limited Partnership # 2 tendered for filing an Assignment of Power Purchase Agreement from Alternative Energy, Inc. to Northeast Empire Limited Partnership # 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17861 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–40–008]

Northern Natural Gas Co., Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that the Northern Natural Gas Company (Northern) on July 10,

1991, tendered for filing the tariff sheets listed below. Northern has requested that the proposed tariff sheets be effective as indicated on the listing below:

Third Revised Volume No. 1	Effective date
Substitute Second Revised Sixtieth Revised Sheet No. 4A.	June 1, 1991.
Substitute Sixth Revised Ninetieth Revised Sheet No. 4B.	Do.
Substitute First Revised Original Sheet No. 74S.	Do.
Third Substitute Sixty-Second Revised Sheet No. 4A.	July 1, 1991.
Second Substitute Ninety-Second Revisd Sheet No. 4B.	Do.
Third Substitute Sixty-Third Revised Sheet No. 4A.	Do.
Fourth Substitute Ninety-Third Revised Sheet No. 4B.	Do.
Substitute Ninety-Fourth Revised Sheet No. 4B.	Do.
Substitute Thirteenth Revised Sheet No. 4H.	Do.
Fifth Substitute Ninety-Third Revised Sheet No. 4B.	Do.

Northern also filed to withdraw the following previously filed tariff sheets:

Docket No. RP91–40–002

Filed: June 27, 1991

Substitute Seventh Revised Tenth Revised Sheet No. 4H

Docket No. TM91–3–59–000

Filed: June 27, 1991

Second Substitute Twelfth Revised Sheet No. 4H

Northern states that such tariff sheets are being submitted in compliance with the Commission's order dated June 19, 1991 in Docket No. RP91–40, which approved an uncontested settlement and allows Northern, effective June 1, 1991, to recover, through a volumetric surcharge and a demand surcharge, approximately $77 million in take-or-pay buyout, buydown, contract reformation and settlement costs (transition costs). Northern states that in previous compliance filings it reflected recovery of demand surcharge costs from GS customers through the GS commodity rate and the GS fixed cost recovery rate, rather than through a demand surcharge applied to such customers. Northern states that this filing corrects those previous filings and makes certain conforming changes in Northern's PGA and NGTS filings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17913 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–165–001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 17, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Original Sheet No. 32–AQ.3
Original Sheet No. 32–BU.4
Second Revised Sheet No. 43–7

Panhandle states that the proposed changes herein which are being filed in compliance with the Commission Order dated June 28, 1991 in the subject proceeding, reflect a new provision to the General Terms and Conditions (1) for sales service and (2) for transportation service pursuant to Rate Schedule PT-Firm and Rate Schedule PT-Interruptible to provide for the payments of refunds by electronic funds transfer to those sales and transportation customers who provide payment for services to Panhandle by electronic funds.

Panhandle respectfully requests any waiver of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective July 1, 1991.

Panhandle states that copies of this filing have been sent to it's jurisdictional customers, affected state regulatory commissions and parties to the Docket No. RP91–165–000 proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17914 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–72–004]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 17, 1991 submitted for filing workpapers to support figures on tariff sheet nos. 72 through 75 filed on June 11, 1991 in Docket Nos. RP91–72–003, *et al.* as part of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Texas Eastern states that it is also submitting as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Revised Eleventh Revised Sheet No. 72
Revised Eleventh Revised Sheet No. 73
Revised Tenth Revised Sheet No. 74
Revised Eleventh Revised Sheet No. 75

Texas Eastern states that these tariff sheets are being filed to revise supersession inaccuracies resulting from the effective date granted by the Commission in its order dated July 11, 1991 in Docket Nos. RP91–72–003, *et al.*

The proposed effective date of the tariff sheets listed above is July 12, 1991.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91–72, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17915 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IR-924-002]

Public Utility Commission of Texas; Petition for Waiver

July 23, 1991.

Notice is hereby given that the Public Utility Commission of Texas (TPUC), has filed on June 14, 1991, as amended on July 12, 1991, pursuant to § 292.403 of the Commission's Regulations, a petition for waiver of certain obligations imposed under § 292.303(a) and 292.303(b) of the Commission's Regulations (18 CFR part 292 subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The TPUC has duly implemented the Commission's PURPA Regulations by filing a PURPA implementation plan on November 16, 1981.

The TPUC requests a waiver on behalf of the Brazos Electric Power Cooperative, Inc. (BEPC) and nineteen of its twenty members. Specifically, the TPUC seeks waivers on behalf of BEPC of the obligation under 18 CFR 292.303(b) to sell power to QFs and of the obligation on behalf of nineteen of BEPC's members of the obligation under 18 CFR 292.303(a) to purchase energy and capacity that is made available by a QF.

Any person desiring to be heard or protest and of the above filings should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed within 30 days after the date of publication of this notice and must be served on the TPUC. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17919 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA90-19-000]

Southern Energy Co.; Order Establishing Hearing Procedures

Issued July 23, 1991.

On May 23, 1991, the Chief Accountant issued a contested audit report under delegated authority noting Southern Energy Company's (Southern Energy) disagreement with an item contained in the staff's audit report of Southern Energy's books and records. The report noted Southern Energy's disagreement with the staff regarding Correcting Entry No. 1 on Schedule No. 2 and Compliance Exception No. 1 on Schedule No. 3, concerning the accounting for depreciation expense on the LNG facilities. Southern Energy was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

On June 24, 1991, Southern Energy responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, chapter I), a public hearing shall be held concerning the appropriateness of Southern Energy's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17866 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-173-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 18, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 5, 1991:

First Substitute Third Revised Sheet No. 16K

First Substitute Second Revised Sheet No. 16O

First Substitute Second Revised Sheet No. 16DD

First Substitute Second Revised Sheet No. 34R

South Georgia states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on July 3, 1991, in Docket No. RP91-173-000. South Georgia has requested that the Commission make the sheet effective July 5, 1991, the effective date approved by the Commission's Order.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17910 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-172-001]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 18, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheet to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective July 5, 1991:

First Substitute Third Revised Sheet No. 30W

Southern states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on July 3, 1991, in Docket No. RP91-172-000 reflecting the inclusion of interest on prepayments made in conjunction with requests for firm transportation. Southern has requested that the Commission make the sheet effective July 5, 1991, the date the prepayment requirement became effective.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17911 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-11-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 17, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets.

Proposed to be Effective August 17, 1991

Eighth Revised Sheet No. 60
Eighth Revised Sheet No. 61
Seventh Revised Sheet No. 62
Eighth Revised Sheet No. 63

Texas Eastern states that these tariff sheets are being filed to reflect the reduction by Southern Natural Gas Company (Southern) of costs flowed through in Southern's Docket No. TM90-5-7 to Texas Eastern which are attributable to charges directly to Southern by Sea Robin Pipeline Company (Sea Robin) and reflect the crediting of amounts previously billed to customers by Texas Eastern for those costs related to Sea Robin as flowed through by Southern. Southern filed tariff sheets on May 31, 1991, reflecting the reduction in costs from Southern's take-or-pay recovery attributable to Sea Robin.

Texas Eastern states that it is also submitting as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective June 22, 1991

Revised Seventh Revised Sheet No. 60
Revised Seventh Revised Sheet No. 61
Revised Sixth Revised Sheet No. 62
Revised Seventh Revised Sheet No. 63

Texas Eastern states that these tariff sheets are being filed to revise supersession inaccuracies resulting from the effective date granted by the Commission in its order dated June 20, 1991 in Docket Nos. RP91-72-002 and TM91-6-17-000.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91-72, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17912 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-7-001, et al.]

Southern Natural Gas Co.; Report of Refunds

July 22, 1991.

Take notice that on June 3, 1991, Southern Natural Gas Company (Southern) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds made in accordance with the provisions of Southern's Stipulation and Agreement in Docket Nos. RP83-58, *et al.*, approved by the Commission in an Order dated March 23, 1989.

Southern states that copies of this filing were mailed to all of Southern's jurisdictional sales customers affected by the report as well as parties on the official service list and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before July 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17905 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-10-012]

Williston Basin Interstate Pipeline Co.; Refund Report

July 22, 1991.

Take notice that on July 13, 1991, Williston Basin Interstate Pipeline Company (Williston Basin) respectfully submitted for filing with the Commission copies of a Refund Report and supporting workpapers in compliance with the Commission's "Order Affirming in Part and Modifying in Part Initial Decision" issued August 3, 1990 and "Order Granting in Part and Denying in Part Rehearing" issued May 31, 1991, in the above-referenced proceedings. Williston states that on this same date refunds were paid to Williston Basin's customers for the lock-in period May 2, 1986 through February 29, 1988, in

accordance with § 154.67(c) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Parties which have heretofore intervened in this proceeding need not file anew. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17868 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Cooperative Agreement; Financial Assistance Award to California Municipal Utilities Association

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed cooperative agreement between the Western Area Power Administration (Western) and the California Municipal Utilities Association (CMUA) to assist in the implementation of Western's Conservation and Renewable Energy (C&RE) Program in the State of California.

SUMMARY: Western announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement to develop and implement C&RE activities for consumer-owned retail electric suppliers in the State of California (State) has been restricted to CMUA, the organization recognized by the American Public Power Association as the State association representing California consumer-owned utility interests. These consumer-owned retail suppliers include irrigation districts with utility responsibility, public utility districts, municipal utility districts, municipalities, rural electric cooperatives, and public power agencies. The 70-member CMUA is the only central representative organization which can effectively consider all the varying interests from these differently directed political bodies and supply the needed energy efficiency and renewable energy related products to the target audience—consumer-owned retail suppliers of energy services. CMUA has the resources, technical capability, and statewide credibility to manage and promote this cooperative program. The program provides technical assistance to Western's utility customers in planning, developing, and implementing effective C&RE programs.

FOR FURTHER INFORMATION CONTACT: Dorothy Gross, Contract Specialist, Western Area Power Administration, P.O. Box 3402 Attn: A1521, Golden, CO 80401-3398, (303) 231-1578.

SUPPLEMENTARY INFORMATION: Western's C&RE Program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE Program activities to its customers. The cooperative agreement being conducted with CMUA will accomplish the goals of Western to provide a leadership role in conservation and renewable energy planning and development for its preference customers with utility responsibility.

Solicitation Number: DE-RP65-91WN09027

Scope of Project: The Western/CMUA C&RE Program will provide technical assistance to Western's California customers, who are primarily electric utilities, to help them plan, develop, and implement effective C&RE programs in accordance with Western's published Guidance and Acceptance Criteria. Services to be delivered under this agreement include, but are not limited to: technical expertise on C&RE-related subjects; technology transfer workshops; educational products such as manuals and slide or video technical presentations; C&RE software packages; identification of energy resource potential; project evaluations and reports; model energy efficiency plans; methodologies for addressing environmental factors in resource planning efforts; and dissemination of information to the public on energy efficiencies.

Issued at Golden, Colorado, July 15, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-17883 Filed 7-26-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to Edward David Dysarz

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Edward D. Dysarz, under Grant Number DE-FG01-91CE15513. The proposed grant will provide funding in the estimated amount of $99,950 for Edward D. Dysarz to design and provide the materials for construction of a prototype of the multiwell pump. The total cost of the project will be $230,876, the remainder of the cost will be shared by a manufacturing company leading to commercialization of the multiwell pump.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Edward D. Dysarz is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. This pump is a highly promising new technology with an ingenious mechanical linkage between two wells which are paired and balanced against each other to drive both wells with one motor. This concept eliminates the need for dead weight counterbalances and thus allows the beam pump to be more commonly used in clustered locations, such as an offshore platforms, thus saving energy and increasing oil productivity.

The proposed project is not eligible for financial assistance under a recent, current planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR-322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-17938 Filed 7-26-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to National Association of Home Builders Research Center

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to National Association of Home Builders (NAHB) Research Center under Grant Number DE–FG01–91CE15506. The purpose of the proposed grant is investigate the functionality and cost effectiveness of the Lite-Form system for poured-in-place walls. The system utilizes readily available sheet insulation and high-impact polypropylene ties to increase the R-value of the walls and provide a pliable surface for interior and/or exterior finishing materials. The advantages of the insulated wall system over conventional walls include: Increased energy efficiency and comfort, improved moisture control, and reduced radon gas penetration. This grant will provide funding to NAHB Research Center in the estimated amount of $90,000 to be provided by the Government.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the NAHB Research Center is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a unique system of thermally insulative forms and ties for poured-in-place concrete walls. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17937 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the Petroleum Industry Research Foundation

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under grant Number DE–FG01–91PE79095 to the Petroleum Industry Research Foundation. The grant is for a study and report on the impact of recent State and Federal oil spill prevention and liability legislation on the oil market, the availability and cost of marine transportation, and the ability of the market to transport oil imports. This effort will have a total estimated cost of $157,259 to be provided by DOE.

SCOPE: The grant will provide funding for the Petroleum Industry Research Foundation to perform a study on U.S. oil spill legislation and the tanker market.

The proposed study represents an innovative approach because rather than a simple review of the legislative initiatives, it will move a critical step further, to examine the impact of legislation and regulations on the oil market. The multi-diciplinary approach—economic, legal, and technical—will provide a unique analysis for policy makers to use in designing legislation and regulations. It will allow the Department of Energy, specifically, to better evaluate the Nation's energy situation, its vulnerability to catastrophic supply interruptions, competition in petroleum transportation markets and ultimately, the ability of the petroleum industry to serve the needs of consumers.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the Petroleum Industry Research Foundation. The key personnel of the Petroleum Industry Research Foundation are highly qualified in the petroleum industry. It has been determined that this study has high technical merit, representing an innovative approach that fully supports a public purpose by contributing significantly to the public understanding and focusing on oil spills and alternative methods of payment for resulting environmental damage.

The term of the grant shall be seven months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Gracie Narcho, PR–322.1, 1000 Independence Ave. SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17938 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to University of Missouri—Rolla

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to the University of Missouri—Rolla, under grant Number DE–FG01–91CE15452. The proposed grant will provide funding in the estimated amount of $83,568 for the inventor Dr. Thomas J. O'Keefe and Dr. William J. James, Senior Research Investigator at the University of Missouri—Rolla, to develop new approaches to be used with polymeric materials used in dies for stamping out automobile bodies and other parts. The researchers plan to work closely with General Motors in constructing a larger reactor to allow low-temperature coatings of carbides and nitrides on pilot-scale Superior Tooling and Molding Plastic (STAMP) dies. Technology transfer would then follow from a university laboratory directly into the private sector where it would be put to immediate use. The probability of achieving these objectives is very high representing a unique technology which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the University of Missouri—Rolla is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents

a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a unique process in that the inventor has found a way to deposit hard, wear-resistant thin films on substrates, such as polymers, that cannot withstand the conventional high-temperature, high pressure coating process. The technique the inventor uses employs room temperature and minimal pressure. The National Institute of Standards and Technology (NIST) have estimated that an enhanced low-temperature coating of carbides and nitrides employing the STAMP die process in industry could result in a saving figure of 1.5 million barrels of oil equivalent annually.

The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR-322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-17939 Filed 7-26-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-44-NG]

Cibola Corp.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on July 1, 1991, of an application filed by Cibola Corporation (Cilbola) requesting blanket authorization to import up to 36.5 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. Cibola intends to use existing pipeline facilities within Canada and the United States. Cibola states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 28, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-0503.

SUPPLEMENTARY INFORMATION: Cibola, a marketer of natural gas, is a corporation organized under the laws of the State of Nebraska, having its principal place of business in Omaha, Nebraska. Cibola proposes to purchase gas from a variety of Canadian suppliers at market responsive prices and terms for sale to various United States customers, which might include end users, distribution companies, pipeline companies and other marketers of natural gas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, of policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official

record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cibola's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, expect Federal holidays.

Issued in Washington, DC, on July 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–17940 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–27–NG]

Venro Petroleum Corp.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Venro Petroleum Corporation blanket authorization to export to Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first export. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–17941 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–43–NG]

American Natural Gas Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 26, 1991, of an application filed by American Natural Gas Corporation (American Natural), for blanket authorization to import up to 219 Bcf of natural gas from Canada, over a two-year term, beginning on the date of first delivery after August 2, 1991, the date American Natural's current authorization to import gas from Canada expires (see 1 FE Para. 70,719, August 14, 1987). American Natural states that no new facilities are planned in connection with the application and that it will submit quarterly reports to FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, August 28, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4523

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: American Natural, a Colorado corporation with its principal place of business in Fort Collins, Colorado, gathers, purchases, and markets natural gas and sells it to pipelines, local distribution companies, and commercial and industrial end users throughout the United States. The applicant states that it has entered into gas sales agreements for some of the gas proposed to be imported under the requested authorization and is engaged in negotiating additional gas sales contracts. Furthermore, the company anticipates that it will enter into other spot sales during the requested two-year period. American Natural states that the price of gas will be the result of negotiation between the parties and that contracts will be competitive, and reflect market conditions. American Natural asserts that there is a need for the proposed gas imports and that Canada is a secure source of supply.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided,

such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of American Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC July 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–17882 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10853–000 Minnesota]

Otter Tail Power Co; Availability of Environmental Assessment

July 23, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the existing Otter Tail River Hydroelectric Project located on the Otter Tail River in Otter Tail County, near Fergus Falls, Minnesota, and has prepared an Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the existing project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17918 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TF91–4–20–001, TM91–10–20–001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff; Correction of Tariff Sheet

July 23, 1991.

Tkae notice that Algonquin Gas Transmission Company ("Algonquin") on July 17, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheet:

Proposed to be effective July 1, 1991
Sub Original Sheet No. 25

Algonquin states that Sub Original Sheet No. 25 is being filed to correct a typographical error contained in Original Sheet No. 25 which was filed as part of Algonquin's interim PGA filing dated July 1, 1991 in Docket Nos. TF91–4–20–000 and TM91–10–20–000. Algonquin further states that Sheet No. 25 as found in the Interim PGA indicates a commodity rate of $2.6587, the correct rate as contained in the instant filing is $2.6379.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17907 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3978–9]

Clean Air Act Advisory Committee; Notice of Additional Committee Appointments

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR No. 217 46,993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990. In the November 8, 1990 notice, EPA also sought nominations for candidates for membership on the CAAAC. On March 25, 1991, EPA gave notice on the appointment of members to the CAAAC.

APPOINTMENT OF ADDITIONAL COMMITTEE MEMBERS: As the result of advice received from the CAAAC and other sources, EPA decided that certain areas represented on the CAAAC would benefit from the addition of new members. Consequently, the following individuals have agreed to accept EPA's invitation to serve as members of the Committee:

Dr. Thomas J. Godar, M.D., Director, Pulmonary Disease Section, St. Francis Hospital & Medical Center, Hartford, Connecticut.

Ms. Linda F. Golodner, Executive Director, National Consumers League, Washington, DC

Mr. William Klinefelter, Legislative Director, Industrial Union Department, AFL/CIO, Washington, DC

Mr. Raymond Lewis, President, American Methanol Institute, Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382–7430, FAX (202) 245–4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR–443), Office of Air and Radiation, Washington, DC 20460.

Dated: July 23, 1991.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91-17932 Filed 7-26-91; 8:45 am]

BILLING CODE 6560-50-M

Lee's Lane Landfill Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Lee's Lane Landfill Site, Louisville, Kentucky, with the Louisville and Jefferson County Sewer District and Jefferson County. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365 (404) 347-5059.

Written comment may be submitted to the person above by 30 days from the date of publication.

Dated: July 16, 1991.

Donald J. Guinyard,

Director, Waste Management Division.

[FR Doc. 91-17934 Filed 7-26-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3978-8]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding IRECO, Inc., Carthage, Missouri and Salt Lake City, UT

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding IRECO, Incorporated, Carthage, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On May 30, 1991, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint: In the Matter of IRECO, Incorporated, EPA Docket No. VII-91-W-0055.

The Complaint proposes a penalty of Thirty-Five Thousand Dollars ($35,000.00) for discharging pollutants into Center Creek, a water of the United States, from the company's facility near Carthage, Jasper County, Missouri, in violation of the effluent limitations and conditions of National Pollutant Discharge Elimination System Permit MO-0002402.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by IRECO, Incorporated is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: May 30, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-17935 Filed 7-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Coosa Radio Partnership, et al; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
I		
A. Coosa Radio Partnership; Coosa, GA.	BPH-900226MC	91-164
B. Jean M. Gradick; Coosa, GA.	BPH-900226MD	
C. Screaming Eagle Communications, Inc.; Coosa, GA.	BPH-900226ME	
Issue heading and applicants 1. Environmental; A 2. Comparable, A-C 3. Ultimate, A-C		
II		
A. Jean Swann; Tuckerton, NJ.	BPH-900117MQ	91-165
B. Richard Lee Harvey; Tuckerton, NJ.	BPH-900117MS	
C. Jersey Shore Broadcasting Corporation; Tuckerton, NJ.	BPH-900117MV	
D. (David D. Oxenford Jr. and Carolyn B. Oxenford) d/b/a SD Communications Partners; Tuckerton, NJ.	BPH-900117MW	
E. Broad Spectrum Communications, Inc.; Tuckerton, NJ.	BPH-900117MZ	
Issue heading and applicants 1. Environmental; A through D 2. Comparative, A through E 3. Ultimate, A through E		
III		
A. Stephen D. Tarkenton; Gray, GA.	BPH-900416MI	91-166
B. Debbie R. Hart; Gray, GA.	BPH-900416MJ	
C. Gray Communications, Inc.; Gray, GA.	BPH-900416MK	

Applicant, city and state	File No.	MM docket No.
Issue heading and applicants		
1. See Appendix, C		
2. See Appendix, C		
E. See Appendix, C		
4. Comparative, A, B, C		
5. Ultimate, A, B, C		
IV		
A. Radio Ingstad Minnesota, Inc.; Faribault, MN.	BPH-891222MH	91-163
B. Faribault Broadcasting, Inc.; Faribault, MN.	BPH-891228MH	
C. KYMN, Inc.; Faribault, MN.	BPH-891228MJ	
D. Dick Johnson and Kathy Johnson, A Joint Partnership, d/b/a Johnson Broadcasting; Faribault, MN.	BPH-891228MO	
E. Judith M. Clarine; Faribault, MN.	BPH-891228MP	
F. Howard G. Bill; Faribault, MN.	BPH-891228MQ	
G. Alan R. Quarnstrom; Faribault, MN.	BPH-891228MR	
H. Sioux Valley Broadcasting, Inc.; Brainerd, MN.	BPH-891222IF	
Issue heading and applicants		
1. Air Hazard, All		
2. Comparative, All		
3. Ultimate, All		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-17827 Filed 7-26-91; 8:45 am]

BILLING CODE 6712-01-M

Scott M. Trentadue; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
I		
A. Scott M. Trentadue; Whitewater, WI.	BPH-900604MA	91-201
B. Mianne Nelson; Whitewater, WI.	BPH-900606MA	
C. Frederick W. Kinlow d/b/a F.W.K. Broadcasting Co.; Whitewater, WI.	BPH-900606MF	
Issue heading and applicants		
1. Air Hazard, B, C		
2. Contingent Environmental, A		
3. Comparative, A, B, C		
4. Ultimate, A, B, C		
II		
A. Baker Communications Company; Baker, CA.	BPH-900607MA	91-202
B. Robert Adelman; Baker, CA.	BPH-900607MB	
C. Dulos Broadcasting, Inc.; Baker, CA.	BPH-900607ME	
D. Kenneth B. Orchard; Baker, CA.	BPH-900608MK	
E. Mount Wilson FM Broadcasters, Inc.; Baker, CA.	BPH-900607MF (Dismissed Herein).	
Issue heading and applicants		
1. Environmental, A, C, D		
2. Air Hazard, C		
3. Comparative, A through D		
4. Ultimate, A through D		
III		
A. Kennedy Broadcasting, Inc.; Martinez, GA.	BPH-900125MQ	91-203
B. Global Media, Inc.; Martinez, GA.	BPH-900125MR	
C. HBA Broadcasting, Inc.; Martinez, GA.	BPH-900125MT	
D. MJR Broadcasting, Limited Partnership; Martinez, GA.	BPH-900125MV	
E. Jo Maelisa Jones & Tina Elizabeth Jones, A Partnership d/b/a Martinez Broadcasters; Martinez, GA.	BPH900125MW	
F. P.V.R. Communications, L.P.; Martinez, GA.	BPH-900125MX	
G. Little River Communications Group, Inc.; Martinez, GA.	BPH-900125MY	
H. Robert C. Beckham; Martinez, GA.	BPH-900125MZ	
I. Bible Broadcasting Network, Inc.; Martinez, GA.	BPH-900125MB (Dismissed Herein).	
Issue heading and applicants		
1. Environmental, A, C through H		
2. Air Hazard, A through H		
3. Comparative, A through H		
4. Ultimate, A through H		
IV		
A. Nancy C. Hier; Hillman, MI.	BPH-900116MU	91-200
B. Mark A. Kilmer; Hillman, MI.	BPH-900118MN	
C. Mary A. Reynolds; Hillman, MI.	BPH-900118MP	
D. T & L Broadcasting; Hillman, MI.	BPH-900118MR	
Issue heading and applicants		
1. Contingent Environmental, A, B, C		
2. Comparative, A, B, C, D		
3. Ultimate, A, B, C, D		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in appropriate Appendixes above. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center,

1114 21st Street NW., Washington, DC 20036. (Telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–17828 Filed 7–26–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Empire National Bank of Traverse City Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Empire National Bank of Traverse City Employee Stock Ownership Trust, Traverse City, Michigan; to acquire an additional 0.69 percent of the voting shares of Empire Banc Corporation, Traverse City, Michigan.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Clear Lake National Bank Employee Stock Ownership Plan and Trust, Houston, Texas; to acquire 23.5 percent of the voting shares of Hometown Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Clear Lake National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, July 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-17884 Filed 7-26-91; 8:45 am]

BILLING CODE 6210-01-F

Tate Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 19, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Tate Financial Corp., Coldwater, Mississippi; to acquire 100 percent of the voting shares of Senatobia Bank, Senatobia, Mississippi.

Board of Governors of the Federal Reserve System, July 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-17885 Filed 7-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0279]

Animal Drug Export; Heartgard-30® Plus (Ivermectin/Pyrantel Pamoate)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Merck Sharp & Dohme Research Laboratories has filed an application requesting approval for the export of the animal drug Heartgard-30® Plus (ivermectin and pyrantel pamoate).

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8612.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, has filed an application requesting approval for the export of the combination animal drug Heartgard-30® Plus (ivermectin and pyrantel pamoate) to Canada. The product is intended for use as an anthelmintic in dogs. The application was received and filed in the Center for Veterinary Medicine on July 12, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 8, 1991,

and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 23, 1991.

Robert Furrow,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-17897 Filed 7-26-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0283]

Drug Export; Ortho™ HIV-1/HIV-2 ELISA Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems Inc. has filed an application requesting approval for the export of the biological product ORTHO™ HIV-1/HIV-2 ELISA Test System to Australia, Belgium, Canada, Italy, Portugal, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems Inc., Route 202, Raritan, New Jersey 08869, has filed an application requesting approval for the export of the biological product ORTHO™ HIV-1/HIV-2 ELISA Test System to Australia, Belgium, Canada, Italy, Portugal, and The United Kingdom. The ORTHO™ HIV-1/HIV-2 ELISA Test System is a qualitative, enzyme-linked, immunosorbent assay for the detection of antibodies to Human Immunodeficiency Virus, Types 1 and 2 (HIV-1 and HIV-2) in human serum or plasma samples. The application was received and filed in the Center for Biologics Evaluation and Research on July 15, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 8, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 19, 1991

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-17887 Filed 7-26-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991:

Name: Advisory Council on Nurses Education.

Date and Time: September 4, 1991, 9 a.m.-5 p.m.; September 5, 1991, 12 p.m.-4 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on September 4, 9 a.m.-12 p.m.; closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Shortage Reduction and Education Extension Act of 1988 (Pub. L. 100-607). The Council also performs final review of grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; the report of the Director, Division of Nursing and staff reports. The meeting will be closed to the public on September 4, at 12 p.m. to 5 p.m. and 12 p.m. to 4 p.m. on September 5 for the review of grant applications for Nurse Anesthetist Program Grants and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds Grants. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Name: Advisory Council on Nurses Education and National Advisory Council for Nursing Research.

Date and Time: September 5, 1991, 9 a.m.-12 p.m.

Place: Conference Room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open to the Public for entire meeting.

Agenda: The first joint meeting of the Advisory Council on Nurses Education and the National Advisory Council for Nursing Research, will include administrative and special reports. Attention will be focused on activities dealing with health promotion, disease prevention and innovative practice models.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6193.

Agenda Items are subject to change as priorities dictate.

Dated: July 23, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-17888 Filed 7-26-91; 8:45 am]

BILLING CODE 4160-15-M

Human Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of September and October 1991.

Name: Residency Training Review Committee.

Date and Time: September 23–24, 1991, 8:30 a.m.

Place: Conference Rooms I and J, Parkland Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on September 23, 8:30 a.m.–10:30 a.m.
Closed for remainder of meeting.

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on September 23, at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463

Name: Faculty Development Review Committee.

Date and Time: September 26–27, 1991, 8:30 a.m.

Place: Conference Rooms K and L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on September 26, 8:30 a.m.–10:30 a.m.
Closed for remainder of meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on September 26 at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Name: Graduate Training in Family Medicine Review Committee

Date and Time: October 9, 1991, 8:30 a.m.

Place: Conference Rooms I & J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on October 9, 8:30 a.m.–10:30 a.m.
Closed for remainder of meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review progress. The meeting will be closed to the public on October 9, at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Councils should contact Mrs. Sherry Whipple, Executive Secretary of the Faculty Development Review Committee, and the Graduate Training in Family Medicine Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6874.

Agenda items are subject to change as priorities dictate.

Dated: July 23, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–17889 Filed 7–26–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Supplemental Environmental Assessment on the Proposed Florida Panther Captive Breeding Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) has prepared and is making available a draft Supplemental Environmental Assessment (Supplement) regarding the proposed establishment and management of a captive Florida panther (*Felis concolor coryi*) population. Copies of the draft Supplement can be obtained by making requests to the address below. Individuals that have already made a request for a copy of the Supplement and/or have submitted written comments on the Notice of Intent to Prepare A Supplement to the Final Environmental Assessment (**Federal Register** March 28, 1991) on the captive breeding proposal will automatically receive a copy. Information meetings for the purpose of updating the public on the proposed program are being scheduled as indicated below. This notice is being furnished under provisions of the National Environmental Policy Act Regulations (40 CFR 1501.7) to obtain comments from other agencies and the public on the draft Supplement. Following an appropriate public comment and review process, the Service intends to evaluate all comments received and select a preferred course of action by December 1991.

INFORMATION MEETINGS ARE SCHEDULED AS FOLLOWS:

August 19, 1991—7 p.m. The Conservancy (Auditorium), 1450 Merrihue Drive, Naples, Florida, 813/262–0304.

August 20, 1991—7 p.m. Holiday Inn—Airport, 5750 T.G. Lee Boulevard, Orlando, Florida, 407/851–6400.

August 21, 1991—7 p.m. Lake City Holiday Inn, US–90, I–75, Lake City, Florida, 904/752–3901.

DATES: Written comments on the draft Supplement should be received on or before September 12, 1991.

ADDRESSES: Comments should be addressed to James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION AND COPIES OF THE SUPPLEMENT CONTACT:

Dennis B. Jordan, Florida Panther Recovery Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

SUPPLEMENTARY INFORMATION: In December 1990, the Service completed a Final Environmental Assessment on the proposed captive breeding program for the endangered Florida panther. The primary impetus behind this proposal was to preserve and maintain the existing genetic diversity of the Florida panther, to provide opportunity to significantly increase the wild

population, and to provide security against extinction. In the Final Environmental Assessment, the Service evaluated seven potential courses of action in order to identify and select a program that would insure the long-term survival and recovery of the Florida panther in the wild. The Service's preferred alternative in the Final Environmental Assessment was to establish a captive breeding population over a 3- to 6-year period that focused primarily on the capture of a limited number of offspring of key adults (genetic founders) from the wild population. The proposed removal regime would attempt to achieve full genetic representation of the wild population without compromising the integrity of the wild population. The Service determined on December 12, 1990, that the preferred alternative was not a major Federal action significantly affecting the quality of the human environment, and indicated that appropriate permits to implement the program would likely be issued soon after January 19, 1991.

On January 15, 1991, The Fund for Animals, Inc., and Holly Jensen, a Florida resident, filed a lawsuit against the Service regarding the proposed captive breeding program and requested a court injunction that would prevent the issuing of the subject permits. An out-of-court settlement was reached on February 6, 1991, that included the preparation of a Supplement by the Service to be completed by November 30, 1991.

In the Supplement, the Service rigorously explores and objectively evaluates a program designed to mix non-Florida panthers (other *Felis concolor* subspecies) with Florida panthers for genetic enrichment purposes. The Supplement also addresses the feasibility of captive breeding Florida panthers, the conditioning of captive raised panthers for survival in the wild, and public attitudes towards reintroduction of panthers. Additionally, the Supplement provides a thorough, expanded analysis of the feasibility and impact of reintroduction of captive-bred Florida panthers to the wild. This expanded analysis includes: The availability of suitable habitat for reintroduction of captive-bred panthers; reintroduction goals, strategies, and site evaluation, ranking and selection criteria both within and outside Florida; potential conflicts with other uses of such sites including recreational activities such as off-road vehicle use and hunting, and development activity; actions that would be taken to ensure the preservation and suitability of such sites; and, the establishment of target dates for such reintroduction actions to be taken and for any eventual reintroduction. Finally, the Supplement provides a thorough, expanded analysis of the impacts posed to the remaining wild population from the removal of adults and kittens.

Dated: July 22, 1991.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 91-17896 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[WY-920-01-4120-11; WYW124724]

Notice of Invitation; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects an error in the legal description for a Notice of Invitation for coal explortation license, WYW124724, which appeared in the **Federal Register** on July 8, 1991 (56 FR 30931). The legal description in the Notice of Invitation reads:

T. 50 N., R. 72 W., 6th P.M., Wyoming,
Sec. 4: Lots 1 and 2.
T. 51 N., R. 72 W., 6th P.M., Wyoming,
Sec. 33: Lots 1 thru 16;
Sec. 34: Lots 3 thru 6, 9 thru 16.
Containing 1,279.40 acres.

The legal description in the Notice of Invitation should read:

T. 50 N., R. 72 W., 6th P.M., Wyoming,
Sec. 4: Lots 1 and 2, S2NE.
T. 51 N., R. 72 W., 6th P.M., Wyoming,
Sec. 33: Lots 1 thru 16;
Sec. 34: Lots 3 thru 6, 9 thru 16.
Containing 1,279.40 acres.

The Notice of Invitation is also changed to reflect that any party electing to participate in the exploration program must send written notice to AMAX Coal Company and the Bureau of Land Management no later than 30 days after publication of this notice in the **Federal Register.** The balance of the Notice of Invitation remains unchanged.

Dated: July 22, 1991.

F. William Eikenberry,

Associate State Director.

[FR Doc. 91-17875 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-22-M

[NV020-4320-02]

Winnemucca District

July 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board, meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and section 3. Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 5, 1991.

The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10 a.m.
2. District Manager's Update.
3. Update on Range Improvement Funds: FY92 Projects.
4. Advisory Board Prioritize FY92 Range Improvement Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by August 30, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 16, 1991.

Ron Wenker,

District Manager.

[FR Doc. 91-17845 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-01-3110-10-B002; CA 28382]

Exchange of Public and Private Lands in San Luis Obispo County, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28382.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and

Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.28S., R.12E.
Section 31—Lots 3 & 6, SW¼SE¼, 121.72 acres
Section 32—Lot 1, 31.71 acres

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian, California

T.30S., R.20E.
Sec. 19 to 22, 25 to 31, and 34 to 36
T.30S., R.21E.
Sec. 23 to 36
T.30S., R.22E.
Sec. 31
T.31S., R.20E.
Sec. 1 to 3, 10 to 13, 15, 17, and 20 to 25
T.31S., R.21E.
Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36
T.31S., R.22E.
Sec. 3, 6, 7, and 17 to 21
T.32S., R.20E.
Sec. 19, 26, and 27
T.32S., R.21E.
Sec. 1 to 5, and 10 to 13
T.32S., R.22E.
Sec. 6, 7, 16, 19 to 22, 27 to 33, 35, and 36

San Bernardino Meridian, California

T.12N., R.27W.
Sec. 35
T.12N., R.26W.
Sec. 31, and 33 to 36
T.12N., R.25W.
Sec. 31 to 33, and 36
T.11N., R.27W.
Sec. 1 to 4, and 10 to 14
T.11N., R.26W.
Sec. 1 to 18, 20 to 25, and 36
T.11N., R.25W.
Sec. 3, 6, and 7 to 35
T.11N., R.24W.
Sec. 18 to 20 and 29 to 32
T.10N., R.26W.
Sec. 11 and 12
T.10N., R.25W.
Sec. 1 to 3, 7, 8, 12, and 16

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjacent landowners by The Nature Conservancy. Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Publication of this notice in the **Federal Register** segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are difficult to manage. The public interest will be well served by completing the exchange. Interested parties may submit comments to the Area Manager at the following address until August 12, 1991. For further information contact: Bureau of Land Management, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308 (805) 861–4236.

Dated: June 27, 1991.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91–16370 Filed 7–26–91; 8:45 am]

BILLING CODE 4310–40–M

[G–040–G1–0406–4212–14]

Public Land Sale in Canadian, Harper, Major, Payne, Pottawatomie, Texas, Woods, and Woodward Counties

AGENCY: United States Department of Interior, Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 43 U.S.C. 1713), at no less than the appraised fair market value as shown below. Any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law, or if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. Most of the parcels do not have legal or physical access and the Bureau of Land Management will not guarantee access. The sale is consistent with BLM planning for the lands involved and has been discussed with governmental units and local officials. Area residents favor the transfer of the lands into private ownership. The public interest would be served by offering the lands for sale.

INDIAN MERIDIAN, OKLAHOMA

[Parcels]

Tract	Legal description	Acres	Value
Canadian County (CN):			
CN–2 ..... OK NM 68904.	T. 10 N., R. 7 W., Sec. 11, lot 8.	14.72	$2,950.00
CN–9 ..... OK NM 68905.	T. 12 N., R. 7 W., Sec. 2, lot 23.	0.22	25.00
Harper County (HP):			
HP–1 ..... OK NM 82740.	T. 29 N., R. 24 W., Sec. 18, lot 5.	0.20	100.00
Major County (MJ):			
MJ–3 ..... OK NM 82741.	T. 20 N., R. 16 W., Sec. 34, lot 21.	15.37	3,100.00
Payne County (PA):			
PA–1 ..... OK NM 82742.	T. 17 N., R. 2 E., Sec. 8, lot 9.	0.96	100.00
PA–3 ..... OK NM 82743.	T. 18 N., R. 4 E., Sec. 17, lot 1.	0.13	100.00
Pottawatomie County (PO):			
PO–1 ..... OK NM 68914.	T. 6 N., R. 2 E., Sec. 35, lot 13.	11.80	2,350.00
PO–2 ..... OK NM 68919.	T. 6 N., R. 3 E., Sec. 35, lot 5.	15.00	3,000.00

INDIAN MERIDIAN, OKLAHOMA—Continued

[Parcels]

Tract	Legal description	Acres	Value
WW-5 ..... OK NM 82751.	T. 25 N., R. 16 W., Sec. 31, lot 7.	0.180	100.00
Woods County (WD):			
WD-2 ..... OK NM 82744.	T 24 N., R. 16 W., Sec. 21, NENE, NESW.	80.00	16,000.00
WD-3 ..... OK NM 82745.	T. 24 N., R. 16 W., Sec. 22, NWNW.	40.00	8,000.00
WD-5 ..... OK NM 82746.	T. 25 N., R. 14 W., Sec. 18, lot 3.	37.27	11,200.00
WD-6 ..... OK NM 82747.	T. 25 N., R. 17 W., Sec. 26, lot 5.	0.20	100.00
WD-7 ..... OK NM 82748.	T. 27 N., R. 20 W., Sec. 2, lot 7.	0.413	100.00
Woodward County (WW):			
WW-2 ..... OK NM 82749.	T. 24 N., R. 17 W., Sec. 1, SESE.	40.00	8,000.00
WW-3 ..... OK NM 82750.	DT. 24 N., R. 17 W., Sec. 12, NENE.	40.00	8,000.00

CIMARRON MERIDIAN, OKLAHOMA

Tract	Legal description	Acres	Value
Texas County (TX):			
TX-50 ..... OK NM 68915.	T. 1 S., R. 12 E., Sec. 5, Blk. 4, lots 6 & 7.	0.161	$200.00
TX-51 ..... OK NM 68916.	T. 1 S., R. 12 E., Sec. 5, Blk. 4, lot 27.	0.067	100.00
TX-53 ..... OK NM 68918.	T. 1 S., R. 12 E., Sec. 5, Blk. 11, lot 13 and N. 9 feet of lot 14.	0.106	125.00

The lands, when patented, will be subject to the following terms, reservations and restrictions:

1. A reservation to the United States for ditches and canals for tracts TX–50, TX–51, and TX–53.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at the BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights.

4. Title will be issued by a patent with restrictions under Executive Orders 11990 and 11988 for the protection and management of wetlands and floodplain. Tracts HP–1, PA–1, PA–3, PO–1, PO–2, WD–7, and WW–5 will contain both patent restrictions. Tracts CN–2, CN–9, MJ–3, WD–2, and WD–6 will contain floodplain patent restrictions only.

The sale will be conducted by sealed bidding. The minimum acceptable bid is listed above. Bids must be received by the Oklahoma Resource Area, 221 N. Service Road, Moore, Oklahoma, 73160–4946, by 10:00 a.m. Monday, September 30, 1991. Federal law requires that bidders be United States citizens 18 years of age or older, or, in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompany the bid (voting registration, birth certificate). Bids sent by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashiers check for at least twenty percent of the bid, made payable to the Department of Interior-BLM. A separate written bid must be submitted for each tract desired. The sealed bid envelopes must be marked on the front lower left hand corner (Example, "September 30, 1991, Land Sale, Tract Number HP–1"). All sealed bids will be opened at 10 a.m. Monday, September 30, 1991. If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by drawing. The successful high bidder will be required to submit the remainder of the payment by cash, certified check, bank draft, money order, cashiers check, or combination thereof, within 180 days of the date of the sale. Failure to pay the full bid price within 180 days shall result in the cancellation of the sale of the tract, and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

If the identified parcels are not sold, they will be available for sale by sealed bid for six months. The sealed bids will be opened at 10:00 am as follows: (1) October 28, 1991; (2) November 18, 1991; (3) December 16, 1991; (4) January 27, 1992; (5) February 24, 1992; (6) March 9, 1992. Publication of this notice will segregate the land from all appropriation, under the public land laws, including the mining laws, for 270 days, or until issuance of patent, or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior. The 45 day comment period ends on September 12, 1991.

ADDRESSES: Comments and suggestions should be sent to: District Manager, Bureau of Land Management, Tulsa District Office, 9522–H E. 47th Place, Tulsa, Oklahoma 74145.

FOR FURTHER INFORMATION CONTACT: John Ledbetter, (405) 794–9624.

Dated: July 19, 1991.

Jim Sims,

District Manager.

[FR Doc. 91–17833 Filed 7–26–91; 8:45 am]

BILLING CODE 4310–FR–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and the Office of Management and Budget; Paperwork Reduction Project (1010–0045); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella, Acting Chief, Engineering and Standards Branch, Engineering and Technology Division, Mail Stop 4700, Minerals

Management Service, 381 Elden Street, Herndon, Virginia 22070–4817.

Title: Sundry Notices and Reports on Wells, Form MMS–331.

OMB approval number: 1010–0045.

Abstract: Respondents submit Form MMS–331 to the Minerals Management Services's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS–331.

Frequency: On occasion.

Description of respondents: OCS oil, gas, and sulphur lessees.

Estimated completion time: .5 hour.

Annual responses: 5,566.

Annual burden hours: 2,783.

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1239.

Dated: July 18, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–17842 Filed 7–26–91; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P–110]

Passenger Train Operation; Chicago Central & Pacific Railroad Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Portage, Wisconsin are out of service because of a derailment. An alternate route is available over the Burlington Northern Railroad Company that requires the use of the Chicago Central & Pacific Railroad Company tracks between East Dubuque and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Chicago Central & Pacific Railroad Company is directed to operate or allow the operation of trains of the National Railroad Passenger Corporation between East Dubuque and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad Company.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 7 a.m., e.d.t., May 13, 1991.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. e.d.t., May 14, 1991, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, May 13, 1991, by William J. Love, Agent.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–17926 Filed 7–26–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 387X)]

CSX Transportation, Inc.; Abandonment Exemption in Letcher County, KY

Applicant has filed a notice of exemption under 49 CFR 1152, Subpart F—Exempt Abandonments to abandon its 6.45-mile line of railroad between milepost LVB–277.61, at Hot Spot, and milepost LVB–284.06, at Whitesburg, in Letcher County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 30, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 12, 1991.[3]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this commission to review an act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 20, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen Anne Koster, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 5, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 24, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–17928 Filed 7–26–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 113X)]

Wabash Railroad Co. and Norfolk and Western Railway Co.—Abandonment and Discontinuance—Between Maumee and Montpelier in Lucas, Fulton and Williams Counties, OH

AGENCY: Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment and discontinuance of service by the Wabash Railroad Company and Norfolk and Western Railway Company of a 48-mile line of railroad in Lucas, Fulton and Williams Counties, OH, subject to standard labor protective conditions.

EFFECTIVE DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 28, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 8, 1991, petitions to stay must be filed by August 13, 1991, and petitions for reconsideration must be filed by August 23, 1991. Requests for a public use condition must be filed by August 8, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–290 (Sub-No. 113X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative:

Robert J. Conney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. (TDD for hearing impaired (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

Decided: July 23, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–17927 Filed 7–26–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

July 23, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis B. Arnold, on (202) 514–4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis B. Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) National Crime Survey

(2) NCS–500(X), NCS–7, NCS–1(X), NCS–2(X), NCS–572(L), Bureau of Justice Statistics

(3) Semi-annually

(4) Persons 12 years old or older living in 60,000 households in 312 PSU's. The National Crime Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the U.S.

(5) 151,200 respondents at .424 hours per total response

(6) 64,146 hours

(7) Not applicable under 3504(h)

New Collections

(1) Report of Public Safety Officer's Permanent and Total Disability.

(2) OJP ADMIN 3650/7, Office of Justice Programs, Bureau of Justice Assistance.

(3) One-time.

(4) Individuals, households, State or local governments, Federal agencies or employees. The collected

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

information is used to evaluate a Federal, state, or local public safety officer's eligibility for a lump-sum benefit awarded upon finding of a permanent and total disability from a line-of-duty injury.
(5) 150 annual respondents at 10 hours per response.
(6) 1500 annual burden hours.
(7) Not applicable under 3504(h).

(1) Obstacles to the Recovery and Return of Parentally Abducted Children: The legal provider survey
(2) No form number. Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
(3) One time.
(4) State or local governments, small businesses or organizations. The purpose of this research program is to document significant obstacles—including legal, policy, procedural, and practical—to the recovery and return of parentally abducted children and develop recommendations for eliminating them.
(5) 297 annual respondents at .483 hours per response.
(6) 143.4 annual burden hours.
(7) Not applicable under 3504(h).

(1) Obstacles to Recovery and Return of Parentally Abducted Children.
(2) No form number. Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
(3) One-time.
(4) Individuals or households, State or local governments. The purpose of this research program is to document and disseminate information on the legal, policy, procedural, and practical obstacles to the recovery and return of parentally abducted children.
(5) 200 annual respondents at .75 hours per response.
(6) 150 annual burden hours.
(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Accounting System and Financial Capability Questionnaire.
(2) OJP Form No. 7120/1. Office of Justice Programs, Office of the Comptroller.
(3) One time.
(4) Non-Profit institutions, small businesses or organizations. This form is completed by applicants that are newly formed firms or established firms with no previous Federal business. It is used as an aid to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds.
(5) 25 annual respondents at 4 hours per response.
(6) 100 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-17942 Filed 7-26-91; 8:45 am]

BILLING CODE 4410-18-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Southwest Research Institute ("SwRI")

Notice is hereby given that, on July 1, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Feasibility Study on Using Molecular Sieves for Diesel NO_x Control." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are:

1. Caterpillar, Inc.
2. Centro Ricerche Fiat
3. Kemira Oy
4. Navistar International
5. Osaka Gas Co., Ltd.
6. TNO Road-Vehicles Research Institute
7. Toyota Motor Corporation
8. Volvo Truck Corporation
9. Emissionsteknik AB
10. Honda R&D Co., Ltd.

Each member's participation is effective as of May 15, 1991.

The purpose of the project is to determine if nitrogen oxides ("NO_x") can be controlled by employing molecular sieves such as zeolites which involve direct catalytic reduction of NO_x to nitrogen or by some other means, such as collection and subsequent reduction. Resulting technology could be applicable to lean exhaust from diesel, gasoline, methanol or natural gas engines. The major tasks involve: (1) A brief literature search, (2) contact with corporate and university researchers, (3) acquisition and bench testing of candidate materials and (4) engine exhaust gas experimentation.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-17846 Filed 7-26-91; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 8–10, 1991, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 20, 1991.

Thursday, August 8, 1991

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.–12 Noon and 1 p.m.–2 p.m.: Diablo Canyon Nuclear Power Plant (Open/Closed)—The Committee will review and report on the results of the long-term seismic reevaluation program for this plant. Representatives of the NRC staff and the licensee will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

2:15 p.m.–3:15 p.m.: Reactor Operating Experience (Open)—The Committee will hear a report by and hold discussions with representatives of the NRC staff and the licensees as appropriate regarding recent operating incidents and events at nuclear facilities, including the loss of off-site power event that occurred at the Vermont Yankee nuclear station.

3:15 p.m.–5:15 p.m.: Advanced Reactor Key Technical Issues (Open)—The members will identify and discuss key technical issues in need of early resolution with respect to the certification of advanced nuclear power plant designs, including the evolutionary and passive light-water reactor nuclear power plant designs.

5:15 p.m.–6:15 p.m.: Reactor Safety Research (Open)—The members will discuss the scope and nature of a proposed Committee report to the

Commission on the NRC safety research program.

Friday, August 9, 1991

8:30 a.m.–9:30 a.m.: San Onofre Nuclear Generating Station, Unit 1 (Open)—The Committee will review and report on the proposed conversion of the provisional operating license for this plant to a full-term operating license. Representatives of the NRC staff and the licensee will participate, as appropriate.

9:30 a.m.–12 Noon: NRC Regulatory Impact Survey (Open)—The Committee will review and report on the results of and proposed regulatory changes resulting from the regulatory impact survey of NRC licensees (SECY–91–172, Regulatory Impact Survey Report—Final, dated June 7, 1991).

1 p.m.–2 p.m.: Implementation of the NRC Station Blackout Rule (Open)—The Committee will hear a briefing and hold a discussion regarding the status of nuclear power plant licensees' corrective measures to deal with "station blackout (USI A–44)." Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

2:15 p.m.–3:15 p.m.: Reliability of Systems (Open)—The Committee will hear a briefing and hold a discussion on the proposed adoption of the "N+2" concept for electrical systems which are actuated to perform safety functions. Representatives of the NRC and the nuclear industry will participate as appropriate.

3:15 p.m.–5:15 p.m.: ACRS Review of Evolutionary and Advanced Nuclear Power Plants (Open)—The Committee will discuss the scope and nature of the ACRS review regarding certification of evolutionary and advanced nuclear power plant designs, including the GE ABWR.

5:15 p.m.–6 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

Saturday, August 10, 1991

8:30 a.m.–11 a.m.: Preparation of ACRS Reports (Open)—The members will discuss proposed reports to the NRC regarding items considered during this meeting.

11 a.m.–12 Noon: Generic Issue 130, Essential Service Water System Failures at Multi-Unit Sites (Open)—The members will discuss a proposed supplementary report to the NRC regarding the NRC staff reaction to the April 18, 1991 ACRS report on the proposed resolution of this Generic Issue.

1 p.m.–2 p.m.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of reports regarding items considered during this meeting and during previous meetings as time and availability of information permit.

2 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will complete discussion of issues considered during this meeting and administrative matters as appropriate related to the conduct of Committee business.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matter being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: July 23, 1991.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 91–17894 Filed 7–26–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271–OLA–4, ASLBP No. 89–595–03–OLA]

Atomic Safety and Licensing Board; Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station; Construction Period Recapture

July 22, 1991.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-identified proceeding, concerning the proposed extension of the expiration date of the Facility Operating License for Vermont Yankee Nuclear Power Station, will commence at 9:30 a.m. on Tuesday, August 6, 1991, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont. The prehearing conference will continue, to the extent necessary, on Wednesday, August 7, 1991. The principal matters to be considered at the conference will be the status of discovery requests in this proceeding, oral arguments on late-filed Contention X,[1] further scheduling for the proceeding, and such other matters as may aid in the orderly disposition of the proceeding.

Members of the public are invited to attend the conference. However, limited appearance statements, as authorized by 10 CFR 2.715(a), will not be taken at this session of the proceeding. Documents related to this proceeding are on file at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Commission's Local Public Document Room, Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

It is so ordered.

Issued at Bethesda, Maryland, this 22nd day of July 1991.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 91–17893 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

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[1] On August 23, 1990, the State of Vermont filed a "Motion for Leave to File Reply to Vermont Yankee's and NRC Staff's Answers to Vermont's Late-Filed Contention." The motion is granted provided that if Vermont chooses to file a written reply, it shall be in the hands of the Board and other parties no later than August 2, 1991.

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form SF 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Form SF 2808, Designation of Beneficiary, is completed by Federal employees and annuitants to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement System in the event of death. This OMB clearance is only submitted for annuitants required to complete the form.

Approximately 2,000 forms SF 2808 will be completed per year. The form requires 15 minutes to fill out. The annual burden is 500 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street NW., CHP 500, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–17854 Filed 7–26–91; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A91–9; Order No. 894]

Extension, Louisiana 71239 (John L. Dailey, Jr., Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: July 23, 1991

Docket Number: A91–9

Name of Affected Post Office: Extension, Louisiana 71239

Name(s) of Petitioner(s): John L. Dailey, Jr.

Type of Determination: Closing

Date of Filing of Appeal Papers: July 17, 1991

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 1, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 17, 1991—Filing of Petition

July 23, 1991—Notice and Order of Filing of Appeal

August 12, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))

August 22, 1991—Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b))

September 11, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c))

September 26, 1991—Petitioners' Reply Brief should Petitioners choose to file one (see CFR 3001.115(d))

October 3, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)

November 13, 1991—Expiration of 120-day decisional schedule (see 39 USC 404(b)(5)).

[FR Doc. 91–17836 Filed 7–26–91; 8:45 am]

BILLING CODE 7710–FW–M

[Docket No. A91–10; Order No. 895]

Mount Clemens, Michigan 48043 (Quinnie Cody, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: July 23, 1991.

Docket Number: A91–10

Name of Affected Post Office: Mount Clemens, Michigan 48043

Name(s) of Petitioner(s): Quinnie Cody and others

Type of Determination: Partial closing

Date of Filing of Appeal Papers: July 18, 1991

Categories of Issues Apparently Raised:

1. Whether Postal Service's action is subject to the requirements of 39 U.S.C. 404(b).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).
3. Effect on employees (39 U.S.C. 404(b)(2)(B)).
4. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
5. Economic savings (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 2, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 18, 1991—Filing of Petition

July 23, 1991—Notice and Order of Filing of Appeal

August 12, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))

August 22, 1991—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b))

September 11, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c))

September 30, 1991—Petitioner's Reply Brief should Petitioners choose to file one (see CFR 3001.115(d))

October 7, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)

November 15, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5))

[FR Doc. 91-17835 Filed 7-26-91; 8:45 am]

BILLING CODE 7710-FW-M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of amended routine use in existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to amend an existing routine use in system USPS 010.080, Collection and Delivery Records—Rural Carrier Route Records. An existing routine use permits disclosure of name and address information to local governments or planning authorities for the limited purpose of address conversion. This notice amends that routine use to permit disclosure under the same restricted conditions to agents under contract to those local governments or planning authorities.

DATES: This proposal will become effective without further notice 30 days from the date of this publication (August 29, 1991) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to the Records Office, US Postal Service, 475 L'Enfant Plaza SW RM 8141, Washington, DC 20260-5010, or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in room 8141.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: Privacy Act system USPS 010.080, Collection and Delivery Records—Rural Carrier Route Records contains the names and rural route locations of customers who receive rural mail delivery service. As stated by the system description (last published at 54 FR 43661 on October 26, 1989), a use of the information is to assist government planning authorities in converting rural addresses to locatable (city-style) street addresses. Local planning authorities usually request the conversion in connection with Emergency 9-1-1 implementation. Consistent with the system purpose, existing routine use No. 4 permits disclosure of name and address information to government planning authorities, limited to that necessary to assign a locatable street address to each rural route address. The amended routine use No. 4 will also permit disclosure of the same limited information for the same limited purpose to firms under contract with the local government planning authorities. The firm will be required to execute a confidentiality agreement (Agreement) certifying that it is a contracted agent of the local planning authority to assist that authority in address conversion connected with Emergency 9-1-1 implementation. The Agreement requires the contractor to protect the confidentiality of address information provided and to use the information solely for the purpose of Emergency 9-1-1 System implementation. Further, the contractor is prohibited from copying address information received from the Postal Service and must return all such information upon fulfillment of the contract or Postal Service demand. Internal access must be limited on a need to know basis and public disclosure of information received from the Postal Service or of information resulting from such information is prohibited. Under these conditions, the proposed amendment should not impact the privacy of individuals.

Disclosure under the amended routine use is compatible with the purpose statement of USPS 080.010, discussed above.

Accordingly, it is proposed that existing routine use No. 4 to system USPS 010.080, Collection and Delivery Records—Rural Carrier Route Records be amended as follows:

USPS 080.010

SYSTEM NAME:

Collection and Delivery Records—Rural Carrier Route Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

4. Name and address information may be disclosed to government planning authorities, or firms under contract with those authorities, for the purpose of assigning locatable (city-style) addresses to rural addresses, but disclosure will be limited to that necessary for address conversion or assignment.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-17724 Filed 7-26-91; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18247; 811-3635]

Rochester Growth Fund, Inc.; Notice of Application

July 23, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Rochester Growth Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 70 Linden Oaks, Rochester, New York 14625.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management company organized and existing as a corporation under the laws of the State of New York. On January 21, 1983, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act. Applicant also filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 on January 21, 1983. The registration statement was declared effective on April 6, 1983. Applicant's initial public offering commenced on April 6, 1983.

2. At a meeting held on July 26, 1990, Applicant's board of directors approved an agreement and plan of reorganization. On October 12, 1990, Applicant filed proxy materials with the Commission relating to the proposed reorganization. Applicant's shareholders approved the reorganization at a special meeting held on November 26, 1990.

3. On November 27, 1990, pursuant to the agreement and plan of reorganization, Applicant transferred substantially all of its assets and liabilities to Rochester Convertible Fund (the "Acquiror") in exchange for shares of the Acquiror's capital stock in reliance on rule 17a–8 of the Act. Applicant distributed such shares to its shareholders *pro rata*. The transfer of Applicant's assets and liabilities in exchange for shares of Acquiror's capital stock was based on the relative net asset value of the funds.

4. The total expenses incurred in connection with the reorganization were $39,900 as of the date of the application. This amount was borne by Applicant's investment adviser, but up to $40,000 of it is subject to reimbursement by the Acquiror if the Acquiror reaches an aggregate net asset value equal to $12,000,000, as more fully described in the application. As of the date of the application, the Acquiror had an aggregate net asset value equal to $6,000,000.

5. Applicant has filed a certificate of dissolution with the New York Department of State.

6. As of the date of the application, Applicant had no debts or liabilities and was not a party to any litigation or administrative proceeding.

7. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17924 Filed 7–26–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 19, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47646

Date filed: July 15, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1339 dated June 14, 1991, North Atlantic-Middle East (Except Israel), R–1 To R–15.
Proposed Effective Date: October 1, 1991.

Docket Number: 47647

Date filed: July 15, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/P 0877 dated June 6, 1991.
North America-Southwest Pacific Reso 015V, R–1.
TC31 Reso/P 0878 dated June 6, 1991 North America-Southwest Pacific (except French Polynesia, New Caledonia), R–1 To R–19.
TC31 Reso/P 0878 dated June 6, 1991 South America-Southwest Pacific, R–20 To R–28.
TC31 Reso/P 0880 dated June 6, 1991, North America-French Polynesia/New Caledonia, R–29 To R–39.
Proposed Effective Date: October 1/January 1, 1992.

Docket Number: 47650

Date filed: July 19, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated July 3, 1991, Mail Vote 503 (Comp-Special Fares Amending Reso).
Proposed Effective Date: August 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–17871 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 19, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47049.
Date filed: July 17, 1991.
Due Date for Answers, Conforming Applications, or Motions To Modify Scope: August 14, 1991.
Description: Amendment No. 1 to the Application of Delta Air Lines, Inc., request amendment of paragraph IV of its initial Application to request a new or amended certificate of public convenience and necessity authorizing Delta to provide scheduled foreign air transportation of persons, property, and mail as follows: Between the terminal point Atlanta, Georgia via intermediate points in the Azores and Lisbon, Portugal, and the coterminal points Madrid, Barcelona, Malaga, and Palma de Mallorca, Spain.

Additionally, Delta requests authority to combine the foregoing authority with Delta's existing certificate and exemption authority.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–17872 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Order 91–7–29, Dockets 47081 and 47082]

Applications of Miami Air International, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Miami Air International, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air

transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 6, 1991.

ADDRESSES: Objections and answers to objections should be filed in Dockets 47081 and 47082 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590, (202) 366–2340.

Dated: July 22, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–17870 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Tri-City International Airport, Freeland, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Tri-City International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Tri-City Airport Commission. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Tri–City International Airport were in compliance with applicable requirements effective December 13, 1989. The proposed noise compatibility program will be approved or disapproved on or before December 30, 1991.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 3, 1991. The public comment period ends September 01, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET–ADO–650.5, East, Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111 (313) 487–7280. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for the Tri-City International Airport which will be approved or disapproved on or before December 30, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Tri-City International Airport, effective on July 3, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 30, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, East, Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.

Tri-City Airport Commission, Tri-City International Airport, 8500 Garfield Road, P.O. Box P, Freeland, Michigan 48623.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 3, 1991.

Peter A. Serini,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 91–17878 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review; University of Illinois—Willard Airport, Champaign-Urbana, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for University of Illinois—Willard Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the University of Illinois. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for University of Illinois—Willard Airport were in compliance with applicable requirements effective September 5, 1989. The proposed noise compatibility program will be approved or disapproved on or before January 6, 1992.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 9, 1991. The public comment period ends September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (312) 694–7522. Comments on the proposed noise

compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announced that the FAA is reviewing a proposed noise compatibility program for that University of Illinois—Willard Airport which will be approved or disapproved on or before January 6, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for University of Illinois—Willard Airport, effective on July 9, 1991. It was requested that the FAA review this material and that the noise mitigation measure, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 6, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 260, Des Plaines, Illinois 60018.

Office of Airport Manager, University of Illinois—Willard Airport, Savoy, Illinois 61874.

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 9, 1991.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 91-17877 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program/Revised 5-year Noise Exposure Map and Request for Review; Bloomington-Normal Airport, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program (NCP) and revised 5-year noise exposure map (NEM) that was submitted for Bloomington-Normal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Bloomington-Normal Airport Authority. This program and revised NEM were submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Bloomington-Normal Airport were in compliance with applicable requirements effective August 6, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 6, 1992. The revised 5-year noise exposure map will be accepted/rejected at the same time.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 9, 1991. The public comment period ends September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-630.5, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018 (312) 694-7522. Comments on the proposed noise compatibility program and revised 5-year noise exposure map should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program and revised 5-year noise exposure map for Bloomington-Normal Airport. The former will be approved or disapproved on or before January 6, 1992. This notice also announces the availability of this program and revised map for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Bloomington-Normal Airport, effective on July 9, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 6, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with

specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591.
Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018
Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018.
Bloomington-Normal Airport Authority, Bloomington-Normal Airport, R.R. 1, Box 26, Bloomington, Illinois 61704.
Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 9, 1991.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 91-17876 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-03; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Denial of Petitions for Exemption From Low Volume Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for low volume exemption from average fuel economy standards.

SUMMARY: This notice denies petitions filed by three companies, ASC, Inc., PAS, Inc., and Shelby Automobiles, Inc., each requesting low volume exemption from the generally applicable passenger automobile average fuel economy standards, and seeking establishment of alternative standards for each model year for which they seek exemption. The passenger automobiles manufactured by ASC, PAS and Shelby each have two manufacturers, a major, i.e., high volume manufacturer, General Motors (GM) or Chrysler, as well as a low volume manufacturer. Moreover, the passenger automobiles at issue are essentially high performance versions of GM or Chrysler cars, and are sold through GM or Chrysler dealers. NHTSA has concluded that it would be inconsistent with the statutory scheme to exempt the three petitioners from the generally applicable average fuel economy standards. Comments on a proposed decision to deny the petitions were requested in a notice published in the **Federal Register** (56 FR 3137) on January 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen P. Wood, Assistant Chief Counsel for Rulemaking, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-2992.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) in response to the energy crisis created by the oil embargo of 1973-1974, and to the level of oil imports. Congress included a provision in that Act establishing an automobile fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Compliance with CAFE standards is determined by averaging the fuel economy ratings of the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard. The standards for passenger automobiles for MYs 1987-1990 were: 26 miles per gallon (mpg) for MYs 1987 and 1988; 26.5 mpg for MY 1989, and 27.5 mpg for MY 1990.

Section 502(c) of the Motor Vehicle Information and Cost Savings Act ("the Cost Savings Act"), 15 U.S.C. 2002(c), provides that certain manufacturers of passenger automobiles (referred to here as "low volume manufacturers") may be exempted from the generally applicable corporate average fuel economy ("CAFE") standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for the manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Cost Savings Act, a low volume manufacturer is one that manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in the model year (MY) for which the exemption is sought and in the second model year preceding that model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Cost Savings Act to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the nation to conserve energy.

Petitions

By separate petitions, ASC, PAS, and Shelby requested low volume exemptions from the generally applicable CAFE standards and the establishment of alternate standards for specific model years. ASC petitioned NHTSA for an alternate fuel economy standard for its passenger automobiles for MYs 1989 and 1990, seeking an alternate standard of 22.5 mpg for MY 1989 and an alternate standard of 23.0 for MY 1990. ASC stated that it had entered into an arrangement for development and production of a limited number of special high performance passenger automobiles based upon an incomplete automobile to be obtained from General Motors (GM). The automobiles were subsequently identified as the Pontiac Grand Prix STE Turbo and Turbo Grand Prix. PAS requested an exemption from the generally applicable fuel economy standard for MY 1989 but did not request a specific figure as an alternate standard. PAS requested the exemption for a "special production package" of the Pontiac Firebird Trans Am to commemorate its twentieth anniversary. Shelby petitioned the agency for an exemption from the generally applicable average fuel economy standards for passenger automobiles to be manufactured by Shelby in MYs 1987, 1988 and 1989. For MY 1987, Shelby requested an alternate standard of 24.7 mpg, and for MY 1989, Shelby requested an alternate standard of 20.5 mpg. Because it manufactured no passenger automobiles in MY 1988, Shelby subsequently withdrew its petition for MY 1988. Shelby's petition covered its versions of the Chrysler GLHS/Charger, CSX/Shadow, and Lancer and Daytona.

Issues Raised by Petitions

The passenger automobiles manufactured by ACS, PAS and Shelby each have more than one manufacturer: A major manufacturer (either GM or Chrysler) and a low volume manufacturer. Moreover, the passenger automobiles at issue are essentially high

performance versions of GM or Chrysler cars, and are sold through GM or Chrysler dealers. These facts, and the overall relationships between the petitioners and GM or Chrysler, raise the following issues:

(1) Since there is more than one manufacturer of the vehicles in question, is the low volume manufacturer or the major manufacturer considered the manufacturer for CAFE purposes? (If GM or Chrysler is considered to be the manufacturer, the vehicles would be placed in those companies' fleets rather than the fleets of ASC, PAS and/or Shelby.)

(2) To the extent that the low volume manufacturer can be considered the manufacturer for CAFE purposes, is the low volume manufacturer in a control relationship with the major manufacturer? (Under section 503(c) of the Cost Savings Act, the automobiles produced by all manufacturers within a control relationship are considered to be manufactured by the same manufacturer. Thus, if the low volume manufacturer is controlled by GM or Chrysler, the major manufacturer's vehicles would be added to those of the low volume manufacturer for purposes of determining the petitioners' satisfaction of the production volume criterion for eligibility for a low volume exemption. Combining these fleets would make ASC, PAS and/or Shelby ineligible for a low volume exemption.)

(3) Assuming that the low volume manufacturer can be considered the manufacturer for CAFE purposes and is not controlled by GM or Chrysler, would it be appropriate under the statute for NHTSA to grant a low volume exemption given the significant involvement by GM and Chrysler in the manufacture of the passenger cars at issue and the nature of the manufacturing operations performed by the petitioners?

In February 1990, NHTSA sent letters to each of the petitioners, as well as to GM and Chrysler, requesting additional information to assist the agency in analyzing the issues. Each of the companies provided a response to NHTSA's letters.

Notice Proposing To Deny Petitions

On January 28, 1991, NHTSA published in the **Federal Register** (56 FR 3137) a proposed decision to deny the petitions submitted by ASC, PAS and Shelby. Public comment was sought on the proposed decision.

The agency discussed each of the issues cited above. In addressing the first issue, whether the low volume manufacturer or the major manufacturer should be considered the manufacturer for CAFE purposes, NHTSA considered whether 49 CFR part 529 applies to any of the manufacturing arrangements of the petitioners. NHTSA concluded that it does not. Since part 529 does not cover the manufacturing arrangements of Chrysler/Shelby, GM/ASC, or GM/PAS, the agency concluded that the manufacturers can, under a past agency interpretation letter, determine by agreement which of them will count a vehicle as its own.

In addressing the second issue, whether any of the low volume manufacturers are in a control relationship with a major manufacturer, the agency concluded there is no such relationship between the petitioners and GM or Chrysler. NHTSA cited the fact that there are no ownership interests between the companies, and the relationships between the companies appear to be based on arms-length business agreements. In the absence of special other circumstances demonstrating control, NHTSA did not believe that the relationships between the companies indicate control.

The third issue addressed by the agency was whether it would be appropriate under the statute for NHTSA to grant a low volume exemption given the significant involvement by GM and Chrysler in the manufacture of the passenger cars at issue and the nature of the manufacturing operations performed by the petitioners. NHTSA noted that section 502(c) authorizes but does not require the agency to exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the agency establishes an alternate standard for the manufacturer at its maximum level. Title V does not provide any explicit guidance to the agency for exercising its discretion. However, NHTSA is guided by the Administrative Procedure Act, which provides that agency actions must not be arbitrary, capricious, an abuse of discretion or otherwise contrary to law.

NHTSA stated that, in deciding whether to exercise its discretion, it believes it should consider both the statutory scheme as a whole and the special provision for low volume exemptions. The agency tentatively concluded that it would be inconsistent with the statutory scheme to exempt the three petitioners from the generally applicable average fuel economy standards. There were two primary reasons for this tentative conclusion, which are discussed below.

First, granting the petitions would establish a precedent by which major manufacturers could easily transfer significant numbers of low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide CAFE standard. This would disturb the statutory scheme adopted by Congress.

The agency noted that the passenger cars at issue are essentially high performance versions of GM or Chrysler cars. As indicated above, ASC, under its arrangement with GM, used a GM incomplete vehicle to produce the 1989/1990 Turbo Grand Prix and 1990 Grand Prix STE Turbo. The vehicles were then sold through Pontiac dealers. PAS, under its arrangement with GM, used a GM incomplete vehicle to produce the 1989 20th Anniversary Trans Am. Shelby, under its arrangement with Chrysler, modified complete Chrysler vehicles to produce special versions of several Chrysler products. The vehicles were then sold through Dodge dealers selected by Shelby.

The agency stated that in terms of effect, the relationships between GM and Chrysler and the petitioners are not significantly different than if GM and Chrysler contracted out selected powertrain work to other companies. The result is that the major manufacturers can sell, through their dealers, high performance versions of selected GM and Chrysler models. The fact that the sale may be indirect, in the sense that the low volume manufacturer may be an intervening purchaser, does not alter the basic effect.

If NHTSA granted the petitions, the major manufacturers might be encouraged to adopt similar relationships with other companies, for the purpose of transferring low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide CAFE standard. This would disturb the statutory scheme. In establishing a program of average fuel economy standards. Congress intended to permit manufacturers to produce vehicles with fuel economy below the level of the standard, but only if they produce sufficient numbers of vehicles with fuel economy above the level of the standard to enable them to meet the standard. If manufacturers could transfer low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide standard, they would have less incentive to produce vehicles with fuel economy above the level of the standard.

Although NHTSA does not believe that this consideration was one of the

motivations underlying GM's and Chrysler's arrangements with the petitioners, the agency must carefully consider the potential practical effects of the precedents that are established by its actions.

The agency noted that its primary concern is not whether a major manufacturer or a low volume manufacturer takes responsibility under the CAFE standards for vehicles they manufacture but instead whether a major manufacturer's vehicles are placed in a fleet exempt from the industrywide CAFE standard. NHTSA stated that it continues to believe that since part 529 does not cover the manufacturing arrangements of Chrysler/Shelby, GM/ASC, or GM/PAS, the manufacturers can determine by agreement which of them will count a vehicle as its own. If the low volume manufacturer decides to take CAFE responsibility, however, the agency tentatively concluded that it would be inappropriate to grant that company a low volume exemption.

As the second reason for its tentative conclusion, NHTSA stated that it did not believe that Congress intended low volume exemptions to be available to manufacturers whose primary manufacturing operations do not involve changing the basic nature of major manufacturers' cars. NHTSA noted that the primary manufacturing operations engaged in by ASC, PAS and Shelby consisted of "boosting" the performance of major manufacturers' cars.

The agency states its belief that Congress, in establishing the low volume exemption procedures, had in mind manufacturers which produce their own special vehicle types, as opposed to companies which primarily "boost" the performance or otherwise modify a major manufacturer's vehicles, without changing its basic nature.

The agency also noted that CAFE standards impose constraints on vehicle performance. While manufacturers may meet CAFE standards in other ways, one option is to reduce or constrain performance. To the extent that another company comes along and "boosts" the performance of a major manufacturer's vehicles, it may be "undoing" a fuel economy improvement made for the purpose of meeting fuel economy standards. NHTSA therefore tentatively concluded that it would be inappropriate for the agency to then grant that company a low volume exemption.

Public Comment

The agency received one comment, from ASC, Inc. ASC stated that it "strongly disagreed" with the proposed decision and urged NHTSA to reconsider its proposal with regard to ASC. ASC offered three main arguments for its position: (1) ASC has met the statutory criteria for an exemption; (2) the facts and circumstances of ASC's development and manufacturing activities merit its being granted an alternate standard as an independent manufacturer; and (3) denying an alternate standard would substantially inhibit the development of specialty car production in the United States. Each of these issues is addressed below.

In support of its position that it meets the statutory criteria necessary to be granted an exemption from generally applicable CAFE standards, ASC stated that it was "neither technologically feasible nor economically practicable" for ASC to have attained higher fuel economy levels and at the same time compete against the foreign imports in their market. ASC also stated that considering the low number of vehicles involved, establishing an alternate standard for the company would not affect the need of the United States to conserve energy.

NHTSA notes that, as discussed in the January 1991 notice, section 502(c) authorizes but does not require the agency to grant a low volume exemption if certain statutory criteria are met. A showing that a particular manufacturer meets the statutory criteria does not mean that the agency will necessarily grant an exemption.

The agency also notes that the argument that a particular manufacturer may have achieved its maximum feasible fuel economy level, or that the granting of a particular alternate standard will not affect the need of the United States to conserve energy, does not necessarily lead to the granting of an exemption. With respect to ASC's latter argument, one of the agency's stated concerns about granting the petitions at issue is that such action would establish a precedent by which the major manufacturers could easily transfer significant numbers of low fuel economy vehicles out of their fleets and into fleets exemption from the industrywide CAFE standard. Thus, while the number of vehicles covered by ASC's petition is very small, the precedential effect of granting that company's petition could have a significant impact on the effectiveness of the CAFE statute. In this connection, NHTSA notes that the other major domestic manufacturer, Ford, currently produces its own high performance versions of several of its models, the Taurus SHO and Thunderbird Super Coupe. Granting these petitions would at least create the opportunity for that company to make other manufacturing arrangements in the future.

ASC's second argument is that the facts and circumstances of its development and manufacturing activities merit its being granted an alternate standard as an independent manufacturer. ASC stated that its development and manufacturing activity involved far more than a simple modification and transfer of an already completed vehicle, and asserted that it is a special purpose manufacturer and has produced a fundamentally different automobile from any manufactured by General Motors. Although ASC obtains the incomplete vehicle from GM, ASC stated that "the incomplete vehicle obtained by ASC has no relationship or equivalency to any General Motors corporation vehicle." ASC stated that it performed significant testing on the vehicles, including crash tests, and invested more than 14 million dollars in the vehicles.

ASC compared its situation with that of Checker Motor Corporation, a company which the legislative history of the Cost Savings Act had cited as being the type of company for which low volume exemptions were intended. ASC stated that ASC also is a small special purpose manufacturer with limited flexibility to improve fuel economy and which produces its special vehicle type.

ASC took exception to the suggestion that it may be "undoing" a fuel economy improvement in manufacturing its special high performance vehicle. That company stated that the incomplete vehicle it obtains from GM does not include the power train which is part of the completed automobile. It also argued that the consumer who purchases the vehicle would otherwise not purchase a GM vehicle based upon a similar incomplete vehicle.

ASC also took exception to NHTSA's reference in the January 1991 notice to an advertisment for the Grand Prix STE which appeared in Fortune Magazine. The advertisement was headlined "A Uniquely American Performance Car For the Grown-Up Who Hasn't Given Up, The Grand Prix STE," and prominently featured the trademark "Pontiac We Build Excitement." The advertisement included the GM logo and was copyrighted by GM. The first paragraph read as follows:

> Okay, so you've got a career and responsibility. Pontiac's still willing to revive the driving enthusiasm of your youth with a Special Touring Edition of Grand Prix. From the pavement up, it's a sport sedan formulated with as much of our brand of Excitement as you can get without a prescription.

NHTSA stated that to a reader of the advertisement, and presumably to a purchaser, the Grand Prix STE is simply another GM car. The agency noted that the only mention of ASC in the advertisement was a short footnote which stated in very small print: "Turbo system mfd. by ASC Inc."

ASC stated that the advertisement apparently promotes the Pontiac Grand Prix STE manufactured by GM and "appears perhaps to have been a confused attempt by General Motors marketing personnel to benefit from the favorable review of the Turbo Grand Prix and Grand Prix STE Turbo automobiles manufactured by ASC."

NHTSA disagrees with ASC's argument that it "independently developed and produced a new automobile which is fundamentally different from any automobile produced by GM." In disagreeing, NHTSA is not attempting to minimize the amount of development work that is necessary to create high performance versions of standard models. The amount of resources expended, however, does not dictate whether the final product should be exempted from generally applicable CAFE standards. The agency does not consider the boosting of performance of a major manufacturer's car to be changing the basic nature of the vehicle as a high performance of the car. The agency further does not consider such boosting of performance to be in any way similar to the manufacturing operations engaged in by Checker.

NHTSA also disagrees with ASC's suggestion that GM marketing personnel are confused about Pontiac products. The agency believes that the advertisement illustrates that the vehicles for which ASC seeks a low volume exemption are simply a higher performance version of a Pontiac car. NHTSA notes that the second paragraph of the advertisement reads as follows:

> The STE's fastest-acting ingredient is its 3.1L V6. It features a 60-degree cylinder spread for high-rev potential, a cross-ram intake for dense combustion chamber charging and multi-port fuel injection for immediate response characteristics. Prefer maximum response? Get over 200 horses worth from an available turbocharged and intercooled V6 and special 4 speed automatic transmission.

Thus, the Pontiac Grand Prix STE came in two versions, one with a 3.1 L V6, at 135 horsepower, and the other (the one for which ASC requested an exemption) with a 3.1 L turbo V6, and 205 horsepower. Both versions had the same general appearance, bore the same Pontiac nameplate, were sold through the same dealers, and were advertised in the same General Motors advertisements. The primary difference between the two versions of the car is that the turbo version offered "maximum response."

With respect to ASC's objection to the suggestion that it may be "undoing" a fuel economy improvement, NHTSA notes that this concern is not limited to "tampering" with production vehicles. As discussed in the January 1991 notice, CAFE standards impose constraints on vehicle performance. While manufacturers may meet CAFE standards in many ways, one option is to reduce or constrain performance. Thus, if GM chose to meet the CAFE standard in part by declining to offer a special high performance version of a particular car, that action would be nullified if another manufacturer made the powertrain changes needed for a high performance version and the vehicle was then included in a fleet exempt from the industrywide CAFE standard.

ASC's third argument is that denial of an exemption to ASC will significantly damage the developing U.S. special purpose automobile industry. ASC stated that, unlike larger manufacturers, it is not in a position to offset the lower fuel economy of its special high performance automobiles against other vehicles manufactured by it with higher fuel economy. ASC argued that CAFE penalties would be a disincentive for it and other small manufacturers to attempt further development work.

NHTSA notes that, assuming ASC cannot produce higher fuel economy vehicles to offset the lower fuel economy of its high performance vehicles, that company has two options absent obtaining an exemption. First, in making its manufacturing arrangements with GM, ASC can seek to have GM take CAFE responsibility for the vehicles. Since GM obtains the benefits of selling the incomplete vehicle and adding a high performance version of one of its cars to its product lineup, GM presumably has a significant market incentive to accept such responsibility. Alternatively, ASC can pay the penalties for failing to comply with the CAFE statute. Assuming that ASC can obtain a CAFE of 23.0 mpg, the penalty would be $225.00 per car under a 27.5 mpg standard.

Agency Decision

After carefully considering the comment from ASC, NHTSA has decided to deny the petitions filed by ASC, PAS and Shelby. The agency continues to believe that granting the petitions would establish a precedent by which the major manufacturers could easily transfer significant numbers of low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide standard, thereby disturbing the statutory scheme adopted by Congress. The agency also continues to believe that Congress did not intend low volume exemptions to be available to manufacturers whose primary manufacturing operation does not involve changing the basic nature of major manufacturers' cars.

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.40 and 501.8.

Issued on July 23, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-17869 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Focus Groups on the Small Business Initiative Program Products and Services.
Description: These focus groups will be conducted as part of an effort to evaluate the interest and effectiveness of products and services developed for Research Division's Small Business Initiative program. This program and its products and services were developed as incentives to assist small business owners in meeting their tax obligations, thereby reducing their burden.
Respondents: Small businesses or organizations.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: One-time.
Estimated Total Reporting Burden: 444 hours.
OMB Number: New.
Form Number: 9282.
Type of Review: New Collection.
Title: Form 1040 Electronic Payment Voucher.
Description: Form 9282 will be used by individual taxpayers as a payment voucher to accompany payments of income tax due. The payment of tax due is mailed in by the taxpayer subsequent to the filing of a balance due electronic tax return. There is no other available form for this purpose.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,000,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 50,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–17850 Filed 7–26–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 23, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0998.
Form Number: 8615.
Type of Review: Revision.
Title: Tax for Children Under Age 14 Who Have Investment Income of More Than 1,100.
Description: Under section 1(g), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households.
Estimated Number of Respondents: 500,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—13 minutes.
Learning about the law or the form—12 minutes.
Preparing the form—41 minutes.
Copying, assembling, and sending the form to IRS—17 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 695,000 hours.
OMB Number: 1545–1053.
Form Number: 8709.
Type of Review: Extension.
Title: Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.
Description: This form is used by foreign governments, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Code section 892. The withholding agent uses the information to determine the appropriate withholding, if any.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—13 minutes.
Learning about the law or the form—23 minutes.
Preparing the form—24 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 40,500 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–17851 Filed 7–26–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0714.
Form Number: 8027 and 8027–T.
Type of Review: Extension.
Title: Employer's Annual Information Return of Tip Income and Allocated Tips; Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips.
Description: To help IRS in its examination of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees.
Respondents: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions.
Estimated Number of Respondents: 52,050.
Estimated Burden Hours Per Response/ Recordkeeping:

	Form 8027	Form 8027–T
Recordkeeping	5 hours, 44 minutes.	43 minutes.
Learning about the law or the form.	35 minutes	
Preparing and sending the form to IRS.	43 minutes	1 minute.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 346,456 hours.
OMB Number: 1545–0938.
Form Number: 1120–IC–DISC, Schedule K and Schedule P.
Type of Review: Revision.
Title: Interest Charge Domestic International Sales Corporation

Return; Shareholder's Statement of IC–DISC Distributions; Inter-Company Transfer Price or Commission.

Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc.; Schedule K (Form 1120–IC–DISC) is used to report income to shareholders.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Response/ Recordkeeping:

	1120–IC–DISC	Sched. K	Sched. P
Record-keeping.	96 hrs., 23 mins.	4 hrs., 4 mins.	11 hrs., 58 mins.
Learning about the law or the form.	18 hrs., 40 mins.	47 mins.....	1 hr., 17 mins.
Preparing the form.	27 hrs., 35 mins.	54 mins.....	1 hr., 34 mins.
Copying, assembling, and sending the form to IRS.	1 hr., 53 mins.		

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 225,521 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–17852 Filed 7–26–91; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

[Department Circular—Public Debt Series—No. 21–91]

Treasury Notes of July 15, 1998, Series G–1998; Notice

Washington, July 5, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of July 15, 1998, Series G–1998 (CUSIP No. 912827 B5 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 15, 1991, and will accrue interest from that date, payable on a semiannual basis on January 15, 1992, and each subsequent 6 months on July 15 and January 15 through the date that the principal becomes payable. They will mature July 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, July 10, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 9, 1991, and received no later than Monday, July 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking

institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, July 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 11, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

General Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-17892 Filed 7-24-91; 11:06 am]

BILLING CODE 4810-40-M

[Supplement to the Department Circular—Public Debt Series—No. 21-91]

Treasury Notes, Series G-1998; Notice

Washington, July 11, 1991.

The Secretary announced on July 10, 1991, that the interest rate on the notes designated Series G-1998, described in Department Circular—Public Debt Series—No. 21-91 dated July 5, 1991, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-17899 Filed 7-24-91; 11:06 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

Co-Operative Federal Savings and Loan Association, Westmont, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Co-Operative Federal Savings and Loan Association, Westmont, Illinois, OTS No. 5524, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–17840 Filed 7–26–91; 8:45 am]

BILLING CODE 6720–01–M

Co-Operative Federal Savings Bank, Westmont, Il; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Co-Operative Federal Savings Bank, Westmont, Illinois, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–17838 Filed 7–26–91; 8:45 am]

BILLING CODE 6720–01–M

New Metropolitan Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for New Metropolitan Federal Savings Bank, Hialeah, Florida, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–17839 Filed 7–26–91; 8:45 am]

BILLING CODE 6720–01–M

Clinton Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as Sole Receiver for Clinton Savings and Loan Association, Clinton, Oklahoma, OTS No. 4540, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–17848 Filed 7–26–91; 8:45 am]

BILLING CODE 6720–01–M

New Metropolitan Federal Savings and Loan Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the existing Conservator with the Resolution Trust Corporation as sole Receiver for New Metropolitan Federal Savings and Loan Association, Hialeah, Florida, OTS No. 8331, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–17837 Filed 7–26–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 29, 1991:

A closed meeting will be held on Tuesday, July 30, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 30, 1991, at 2:30 p.m., will be:

Regulatory matter regarding financial institutions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injuctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272–2000.

Dated: July 25, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–18034 Filed 7–25–91; 3:54 pm]

BILLING CODE 8010–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

July 24, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), U.S.C. 552B:

DATE AND TIME: July 31, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20226.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 942nd Meeting—July 31, 1991, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 1957–004, Wisconsin Public Service Corporation
CAH–2.
Project No. 8435–081, Smith Falls Hydropower
CAH–3.
Project No. 6902–015, City of New Martinsville, West Virginia
Project No. 9042–011 Gallia Hydro Partners
CAH–4.
Omitted
CAH–5.
Omitted
CAH–6.
Project Nos. UL87–14–001 and UL87–15–001, Upper Peninsula Power Company
CAH–7.
Project No. 11083–001, Black River Hydro Corporation
Project No. 11084–001, School Street Hydro Corporation
Project No. 11085–001, Raymondville Hydro Corporation
Project No. 11086–001, East Norfolk Hydro Corporation
Project No. 11087–001, Kamargo Corporation
Project Nos. 10636–001, 10637–001, 10638–001, 10639–001, 10640–001, 10641–001 and 10642–001, Niagara Mohawk Power Corporation
Project Nos. 11104–001, 11105–001, 11106–001, 11107–001 and 11108–001, City of Oswego, New York
CAH–8.
Project No. 5461–000, Niagara Mohawk Power Corporation
Project No. 9703–000, South Glens Falls Corporation
CAH–9.
Omitted
CAH–10.
Project No. 8291–005, North Star Hydro, Ltd.
CAH–11.
Project No. 596–004, Utah Power & Light Company
Project No. 4029–002, Utah Municipal Power Agency, *et al.*
Project No. 4040–001, Bountiful City, Utah

Consent Agenda—Electric

CAE–1.
Docket No. ER91–306–000, Kanawha Valley Power Compnay
CAE–2.
Docket No. ER91–480–000, Jersey Central Power & Light Company
CAE–3.
Docket No. QF90–175–002, U S WEST Financial Services, Inc.
CAE–4.
Docket No. ER91–176–001, PSI Energy, Inc. and Consumers Power Company
CAE–5.
Omitted
CAE–6.
Docket Nos. QF87–237–003, 000, and 001, CMS Midland, Inc. and Midland Cogeneration Venture, L.P.
CAE–7.
Docket Nos. ER89–207–004, and EL91–45–000, Public Service Company of New Hampshire
CAE–8.
Docket No. EC91–17–000, Doswell Limited Partnership
Docket No. EL91–40–000, Diamond Energy, Inc.
CAE–9.
Docket No. ES91–30–000, Northeast Empire Limited Partnership #1 and Northeast Empire Limited Partnership #2
CAE–10.
Docket No. EC91–5–000, Kentucky Utilities Company and Old Dominion Power Company
CAE–11.
Docket No. ER91–149–002, Boston Edison Company
CAE–12.
Docket Nos. FA89–17–001, and AC91–80–000, Central Maine Power Company
CAE–13.
Docket No. EL90–38–000, Interstate Power Company

Consent Agenda—Miscellaneous

CAM–1.
Omitted

Consent Agenda—Oil and Gas

CAG–1.
Omitted
CAG–2.
Docket No. RP91–191–000, Northern Natural Gas Company
CAG–3.

Docket No. RP91–189–000, Midwestern Gas Transmission Company
CAG–4.
Docket No. RP91–188–000, El Paso Natural Gas Company
CAG–5.
Docket Nos. RP91–187–000 and CP91–2448–000, Florida Gas Transmission Company
CAG–6.
Docket No. RP91–182–000, Natural Gas Pipeline Company of America
CAG–7.
Docket No. RP91–174–000, Great Lakes Gas Transmission Limited Partnership
CAG–8.
Docket No. RP91–171–000, Southern Natural Gas Company
CAG–9.
Docket No. RP89–161–019, ANR Pipeline Company
CAG–10.
Docket No. RP91–190–000, Southern Natural Gas Company
CAG–11.
Docket Nos. RP91–178–000 and 001, Algonquin Gas Transmission Corporation
CAG–12.
Docket Nos. RP91–68–006, 007 and 008, Penn-York Energy Corporation
CAG–13.
Docket No. RP88–211–013, *et al.*, RP88–211–014, *et al.* and RP88–211–015, *et al.*, CNG Transmission Corporation
CAG–14.
Docket No. RP89–37–017, High Island Offshore System
CAG–15.
Docket No. RP91–192–000, ANR Pipeline Company
CAG–16.
Docket No. TA91–1–29–000, Transcontinental Gas Pipe Line Corporation
CAG–17.
Docket No. TA91–1–86–000, Pacific Gas Transmission Company
CAG–18.
Docket Nos. TA91–1–52–000, 001 and 002, Western Gas Interstate Company
CAG–19.
Docket Nos. TA91–1–49–000, 001 and RP91–169–000, Williston Basin Interstate Pipeline Company
CAG–20.
Docket Nos. TA91–1–20–000, and 001, Algonquin Gas Transmission Company
CAG–21.
Docket Nos. TF91–4–20–000, TM91–10–20–000, TF91–4–20–001 and TM91–10–20–001, Algonquin Gas Transmission Company
CAG–22.
Docket No. CP89–1281–012, Natural Gas Pipeline Company of America
CAG–23.
Docket No. PR91–14–000, Acacia Natural Gas Corporation
CAG–24.
Omitted
CAG–25.
Docket No. RP90–132–006, United Gas Pipe Line Company
CAG–26.
Docket Nos. RP91–82–004 and RP90–108–012, Columbia Gas Transmission Corporation
Docket No. RP90–107–008, Columbia Gulf Transmission Company
CAG–27.
Docket No. RP91–152–002, Williams Natural Gas Company
CAG–28.
Docket Nos. CP88–391–005, RP87–7–072, RP88–167–003, RP85–148–011, CP89–759–009, CP90–2229–002, CP90–2230–003, CP89–790–002, CP88–328–005, RP90–8–005, CP90–499–007, CP84–336–006, G–12059–001, RP73–3–011, RP82–55–049, CP72–255–003, CP90–2228–002, C89–728–002, CP88–273–001, CP89–1916–003, RP90–51–001, CP84–146–008 and G–12503–001, Transcontinental Gas Pipe Line Corporation
CAG–29.
Docket No. RP88–267–013, South Georgia Natural Gas Company
CAG–30.
Docket No. RP91–161–001, Columbia Gas Transmission Corporation
Docket No. RP91–160–001, Columbia Gulf Transmission Company
CAG–31.
Docket No. RP91–147–003, Transcontinental Gas Pipe Line Corporation
CAG–32.
Docket No. RP91–145–002, Florida Gas Transmission Company
CAG–33.
Docket No. RP91–140–004, Questar Pipeline Company
CAG–34.
Docket Nos. RP91–51–006, 007, TM91–5–22–001, TM91–6–22–002, 003, RP91–125–002, 003, RP91–98–005 and 006, CNG Transmission Corporation
CAG–35.
Docket No. TA91–1–55–001, Questar Pipeline Company
CAG–36.
Docket Nos. TA91–1–17–004 and TM91–2–17–001, Texas Eastern Transmission Company
CAG–37.
Docket No. TA90–1–29–003, Transcontinental Gas Pipe Line Corporation
CAG–38.
Docket No. RP85–39–006, Wyoming Interstate Company, Ltd.
CAG–39.
Omitted
CAG–40.
Omitted
CAG–41.
Docket Nos. RP91–100–002 and RP91–134–002, Texas Gas Transmission Corporation
CAG–42.
Docket No. RP89–183–028, Williams Natural Gas Company
CAG–43.
Docket No. RP88–28–002, Northern Illinois Gas Company v. Natural Gas Pipeline Company of America
CAG–44.
Docket No. RP91–132–001, Colorado Interstate Gas Company
CAG–45.
Docket Nos. RP85–122–019 and RP87–30–024, Colorado Interstate Gas Company and Natural Gas Pipeline Company of America
Docket No. RP90–170–001, Colorado Interstate Gas Corporation
CAG–46.
Docket No. RP90–131–001, Northern Natural Gas Company, Division of Enron Corp.
CAG–47.
Docket No. RP91–107–002, Williams Natural Gas Company
CAG–48.
Docket Nos. TQ90–3–32–002 and RP90–126–002, Colorado Interstate Gas Company
CAG–49.
Docket Nos. TA84–2–37–011 and FA84–9–002, Northwest Pipeline Corporation
CAG–50.
Docket No. TM91–8–29–001, Transcontinental Gas Pipe Line Company
CAG–51.
Docket No. ST90–359–002, Transok, Inc.
CAG–52.
Docket Nos. CP86–578–028, CP88–611–001, CP89–312–003, CP89–1740–001 and CP90–203–001, Northwest Pipeline Corporation
CAG–53.
Omitted
CAG–54.
Docket Nos. RP86–119–000, RP88–191–000, RP89–30–000, RP90–122–000, RP91–29–000, RP91–167–000, RP88–228–000, RP89–249–000, RP89–29–000, RP89–149–000, RP89–242–000, CP87–115–000, CP89–470–000, TA84–2–9–000, TA85–1–9–000, TA89–1–9–000, TA90–1–9–000, TA91–1–9–000, RP91–16–000 and CP87–103–000, Tennessee Gas Pipeline Company
CAG–55.
Omitted
CAG–56.
Docket No. PR91–15–000, Farmland Industries Inc. v. Louisiana Intrastate Gas Corporation
CAG–57.
Docket Nos. RP85–203–000, RP88–203–000, RP88–262–000, *et al.*, RP88–88–000, RP82–58–019, *et al.*, TA84–1–28–002, *et al.*, TA85–1–28–001, TA85–3–28–000, TA86–2–28–000, 001, TA86–3–28–000, 001, TQ89–2–28–001, TA90–1–28–001, TA91–1–28–000 and TM91–9–28–000, Panhandle Eastern Pipe Line Company
Docket No. CP86–586–002, Trunkline Gas Company
CAG–58.
Omitted
CAG–59.
Docket No. RP85–202–000, Trunkline Gas Company
CAG–60.
Docket Nos. RP89–248–000, RP90–75–000 and RP90–106–000, Mississippi River Transmission Corporation
CAG–61.
Docket Nos. RP87–30–036 (Phase II) and RP90–69–007, Colorado Interstate Gas Company
CAG–62.
Docket Nos. RP90–164–000 and RP90–165–000, Mid Louisiana Gas Company
CAG–63.
Docket No. PR90–10–000, Llano, Inc.
CAG–64.
Docket No. PR91–2–000, Rhone-Poulenc Pipeline Company

CAG–65.
Docket Nos. IS91–25–000, IS87–14–000 and OR88–3–000, Buckeye Pipe Line Company, L.P.
CAG–66.
Docket No. RM91–8–000, Qualifying Certain Tight Formation Gas for Tax Credit
CAG–67.
Docket No. RI88–30–004, Phillips 66 Natural Gas Company
CAG–68.
Docket No. RM89–16–003, Order Implementing the Natural Gas Decontrol Act of 1989
CAG–69.
Docket No. GP88–27–002, Quintana Petroleum Corp., NGPA § 103 Determination, State of Louisiana Department of Natural Resources
CAG–70.
Docket No. GP91–7–000, Bureau of Land Management, Section 108 Determination, HiGar Petro, Inc., No. 1 U.S.A. "D" Well, FERC No. JD 91–02669
CAG–71.
Docket No. GP91–6–000, American Distribution Company (Alabama Division)
CAG–72.
Docket No. GP88–26–002, Northern Pump Company (Danner No. A–1 Well)
CAG–73.
Docket No. CP91–2–000, Natural Gas Pipeline Company of America
CAG–74.
Docket No. CP88–570–006, Mobile Bay Pipeline Projects
Docket No. CP88–415–004, Florida Gas Transmission Company and Southern Natural Gas Company
Docket No. CP88–437–002, Tennessee Gas Pipeline Company
Docket No. CP89–464–003, Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company
Docket No. CP89–511–002, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89–512–002, Texas Eastern Transmission Corporation
Docket Nos. CP89–513–002, and CP89–517–002, Southern Natural Gas Company
Docket No. CP89–523–002, Transcontinential Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89–522–003, Transcontinental Gas Pipeline Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation
Docket No. CP88–474–002, Texas Eastern Transmission Corporation
Docket No. CI91–16–001, Shell Gas Pipeline Company
CAG–75.
Docket No. CP89–637–007, ANR Pipeline Company
Docket No. CP68–178–004, Trunkline Gas Company
Docket No. CP90–1726–002, Great Lakes Gas Transmission Limited Partnership
Docket No. CP89–638–004, CNG Transmission Corporation
Docket No. CP90–687–004, Transcontinental Gas Pipe Line Corporation
Docket No. CP90–688–003, Texas Gas Transmission Corporation
CAG–76.
Docket No. CP91–1448–001, The Peoples Natural Gas Company
CAG–77.
Docket No. CP89–2095–001, Trunkline Gas Company
CAG–78.
Docket Nos. CP91–1372–001, and CP91–1373–001, Tennessee Gas Pipeline Company
CAG–79.
Docket No. CP91–969–001 CNG Transmission Corporation
CAG–80.
Docket No. CP88–587–004, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG–81.
Omitted
CAG–82.
Docket No. CP91–2334–000, Colorado Interstate Gas Company
CAG–83.
Omitted
CAG–84.
Omitted
CAG–85
Omitted
CAG–86.
Docket No. CP91–321–000, Natural Gas Pipeline Company of America
CAG–87.
Docket No. CP90–1297–000, Williams Natural Gas Company
CAG–88.
Docket Nos. CP91–2013–000, and CP91–2014–000, Trunkline Gas Company
CAG–89.
Docket No. CP91–433–000, Tennessee Gas Pipeline Company
CAG–90.
Docket No. CP91–1228–000, The Inland Gas Company, Inc.
CAG–91.
Docket No. CP89–7–000, Transcontinental Gas Pipe Line Corporation
CAG–92.
Docket Nos. CP89–661–003, and CP88–187–005, Algonquin Gas Transmission Company
CAG–93.
Omitted
CAG–94.
Docket Nos. CP88–212–000, 001, 002, RP89–67–000, 001, RP89–121–000, 001, 002, CP88–238–000, MT89–5–000, 001, 002, 003, 004, MG89–15–000, 001, CP89–1120–000, 003 and RP89–31–000, West Texas Gathering Company
CAG–95.
Omitted
CAG–96.
Docket No. CP90–1439–000, Trunkline Gas Pipeline Company
Docket No. CP91–1794–000, Tennessee Gas Pipeline Company
CAG–97.
Docket Nos. CP70–69–002 and CP70–70–001, Northern Natural Gas Company, Division of Enron Corporation and Northern Natural Gas Company
CAG–98.
Docket Nos. CP91–2127–000, and CP91–2128–000, Western Gas Interstate Company
CAG–99.
Omitted
CAG–100.
Docket Nos. RP89–183–000, 007, 027, RP91–43–003 and TM91–3–43–003, Williams Natural Gas Company
CAG–101.
Docket Nos. RP91–47–000 and TM91–4–16–000, National Fuel Gas Supply Corporation
CAG–102.
Docket No. CP91–2417–000, Iroquois Gas Transmission System, L.P.
CAG–103.
Docket No. CP91–780–000, Northwest Pipeline Corporation
CAG–104.
Docket Nos. RP89–48–014 and RP91–176–000, Transwestern Pipeline Company

Hydro Agenda

H–1.
Project No. 618–023, Alabama Power Company. Order on rehearing.

Electric Agenda

E–1.
Docket No. ER91–457–000, Central Maine Power Company. Order on rate filing.
E–2.
Docket Nos. EC90–10–000, ER90–143–000, ER90–144–000, ER90–145–000 and EL90–9–000, Northeast Utilities Service Company. Order on application merger.
E–3.
Docket No. RM91–17–000, Generic Determination of Rate of Return on Common Equity for Public Utilities. Notice of proposed rulemaking.

Miscellaneous Agenda

M–1.
Docket No. RM91–10–000, Comprehensive Review of the Commission's *Ex Parte* Regulations Using Negotiated Rulemaking Procedures. Notice of intent to establish committee.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RM91–11–000, In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 234 of the Commission's Regulations. Notice of proposed rulemaking.
PR–2(A).
Docket Nos. RP88–92–000, RP88–263–000 and RP88–265–000, United Gas Pipeline Company. Initial decision.
PR–2(B).
Docket No. RP88–92–000, *et al.*, United Gas Pipe Line Company.
Docket No. RP91–28–000, Entex, a division of Arkla, Inc., Louisiana Gas Service Company, and New Orleans Public Service, Inc. Complainants v. United Gas Pipe Line Company Respondent. Order on partial initial decision and complaint.
PR–3.

Docket Nos. RP88-262-000, CP89-917-000, TA89-1-28-000, TA90-1-28-000, RP88-88-002 and RP87-103-000, Panhandle Eastern Pipe Line Company. Initial decision.

PR-4.

Docket Nos. RP88-44-011, 016, 018, RP76-12-000, RP79-12-000, RP85-58-012, 017, 021, 022, 023, 026, 032, RP88-184-002, 004, 005, 006, 010, RP88-185-002, 003, RP88-202-001, 002, RP89-57-001, 003, RP88-184-011, RP88-185-004, RP89-132-004, 005, 007, 009, 011, 012, RP89-230-004, RP90-81-000, 001, 003, 004, TA84-1-33-005, 011, TA84-2-33-013, TA85-1-33-004, 015, 016, 017, TA88-1-33-000, 003, 004, TA88-3-33-003, TA89-1-33-000, 001, 003, TQ89-1-33-002, TM90-3-33-003, 004, TQ91-2-33-002, TQ89-1-33-002, CI81-290-000, CI87-290-002, CI88-605-005, CP87-44-001, CP87-553-001, 002, CP88-77-000, CP88-203-000, 003, CP88-244-001, CP88-270-001, CP88-433-002, CP88-434-003, 004, 005, CP88-700-002, CP89-483-001, CP89-896-001, CP89-1540-002, CP89-1722-001, CP90-1034-001, CP90-1084-002, CP90-1269-002, CP90-1281-002 and CP90-1600-001, El Paso Natural Gas Company. Order on rehearing.

PR-5.

Docket Nos. Docket Nos. RP89-48-011, 013, CP89-1126-001, RP89-222-005, RP89-254-004, CP88-133-002 and CP89-886-002, Transwestern Pipeline Company. Order on rehearing.

PR-6.

Docket Nos. RP91-109-001, CP90-2026,-001, RP90-136-002, RP91-104-002 and RP91-106-002, Transwestern Pipeline Company. Order on rehearing.

PR-7.

Docket Nos. CP91-687-000 and CP90-2275-000, ANR Pipeline Company. Order on certificate.

II. Producer Matters

PF-1.

Reserved

III. Pipeline Certificate Matters

PC-1.

Docket No. RM90-1-001, Revisions to Regulations Governing Authorizations for Construction of Natural Gas Facilities. Final Rule.

PC-2.

Docket No. RM90-7-000, Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

Docket No. GP88-11-002, Hadson Gas Systems, Inc.

Docket No. CP88-286-004, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, *et. al.*

Docket Nos. RP88-81-014, RP88-67-033 and RP88-175-002, Texas Eastern Transmission Corporation. Final Rule.

PC-3.

Docket Nos. CP90-1372-000, 001, CP90-1373-000, 001, CP90-1374-000, 001, CP90-1375-000 and 001, Altamont Gas Transmission Company. Order on application for certificate.

PC-4.

Docket Nos. CP89-460-003, 000, 001, 006, 007 and CP90-1-001, Pacific Gas Transmission Company. Order on application for certificate.

PC-5.

Docket No. CP90-2214-001, El Paso Natural Gas Company. Order on application for certificate.

PC-6.

Docket Nos. CP90-2294-000 and 001, Transwestern Pipeline Company. Order on application for a certificate.

PC-7.

Docket Nos. CP88-433-002 and 003, El Paso Natural Gas Company. Order on requests for rehearing.

PC-8.

Docket No. CP91-1379-000, Kern River Gas Transmission Company. Order on application for rehearing.

PC-9.

Docket Nos. CP91-2284-000 and RP91-153-002, East Tennessee Natural Gas Company. Declaratory order regarding transportation under section 311 of the Natural Gas Policy Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18035 Filed 7-25-91; 4:02 pm]

BILLING CODE 6717-01-M

federal register

Monday
July 29, 1991

Part II

Federal Election Commission

11 CFR Part 100, et al.

Public Financing of Presidential Primary and General Election Candidates; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1991-11]

11 CFR Parts 100, 102, 106, 110, 116, 9001-9007, 9012, and 9031-9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of 26 U.S.C. chapters 95 and 96, the "Presidential Election Campaign Fund Act" and the "Presidential Primary Matching Payment Account Act." The principal changes involve allocation of expenses to the state-by-state spending limits. Other areas in which changes are being made include candidate agreements, the matching fund process, media travel costs, joint fundraising, transfers to compliance funds, and repayment determinations. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 106.2, and Parts 9001-9007, 9012, and 9031-9039, which concern the public financing process for Presidential primary and general election candidates. The Commission is also publishing conforming amendments to §§ 100.8(b), 102.17, 110.1, 110.8, and 116.5. On January 2, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 56 FR 106. Written comments were received from the Internal Revenue Service, the Democratic National Committee, and the Gephardt for President Committee in response to the Notice.

Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c) require that any rules or regulations prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

The Commission has revised its regulations governing publicly financed Presidential primary and general election candidates in several respects. The principal changes involve the allocation of expenses to the state-by-state spending limits, and the exclusion of certain costs from state allocation. Other areas in which changes are made include candidate agreements, media travel costs, joint fundraising, transfers to compliance funds, and repayment determinations.

The Commission has initiated a separate rulemaking to consider possible changes to its matching fund submission and certification procedures set forth at 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. See notice of proposed rulemaking, 56 FR 29372 (June 26, 1991). A new rulemaking is necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which it adopted to address the possible shortage in the Presidential Election Campaign Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991).

In the course of this rulemaking, the Commission considered proposals for change that it did not ultimately incorporate into the revised rules. For example, the Commission sought comments on ways to streamline the audit and repayment processes and to encourage quicker termination of committee activity. One possibility considered was to set winding down costs as a fixed percentage of a candidate's total expenditures during the campaign, or as a percentage of total matching funds certified for that candidate. However, the Commission has decided not to change the current approach to winding down costs at this time because other changes in the primary election regulations, such as the revisions to the state allocation rules, should result in quicker completion of the audit and repayment processes.

In addition, two changes have been made throughout these regulations. First, the term "committee assets" is used instead of "campaign assets." Secondly, the cross-references to the convention regulations at 11 CFR part 9008 have been changed back to the current citations, since the reorganization and revision of the convention rules has been suspended until after the 1992 conventions. See 56 FR 14319 (April 9, 1991).

Part 100—Scope and Definitions (2 U.S.C. 431)

Section 100.8 Expenditure (2 U.S.C. 431(9))

The Commission is now revising and simplifying the way in which the 20% fundraising exemption from the overall spending limit for primary candidates is determined. Under the new method set out in § 100.8(b)(21), the amounts excluded at the state level are added to an amount excluded at the national level to permit committees to claim the full benefit of the 20% fundraising exemption established by the FECA. These changes correspond with changes in the method set out in § 110.8(c)(2) for determining the amount of fundraising costs exempt from the state spending limits.

Part 102—Registration, Organization, and Recordkeeping by Political Committees (2 U.S.C. 433)

Section 102.17 Joint Fundraising by Committees Other Than Separate Segregated Funds

The Commission is revising the joint fundraising rules set out at 11 CFR 102.17 in several respects. First, paragraph (a)(1) now specifies that if committees participating in a joint fundraiser elect to form a separate committee to serve as the fundraising representative, the separate committee cannot be a participant in any other joint fundraising efforts but may conduct more than one joint fundraising effort for the participating committees. This change corrects two problems. First, in cases where this has occurred, there was no explicit allocation formula for determining the amounts to be distributed to each of the participating original committees. Secondly, there has been confusion as to the amount that may be contributed to the fundraising representative for distribution among the participating committees. Under new paragraph (c)(7)(i)(C) the expenses for a series of fundraising events or activities must be allocated on a per event basis. This provision parallels language in current § 9034.8(c)(8)(i)(C).

New language is also being added to paragraph (c)(1) to require the allocation formula to indicate the amount or percentage of each contribution that will

be allocated to each participant. Thus, the formula may not state that a fixed amount of the proceeds will be allocated to a specific participant, or that contributions will be allocated to one participant because the contributions are matchable. Section 9034.8(c)(7)(i) does not permit the committee to use a joint fundraiser to maximize the matchability of contributions. However, the formula may state, for example, that the first $250 of each contribution will be allocated to a particular candidate. The new rules also delete the previous language in paragraph (c)(1) indicating that the joint fundraising participants must use the formula to allocate fundraising expenses. This change was necessary because paragraph (c)(7) indicates that the joint fundraising representative allocates expenses based on the percentage of total receipts allocated to each participant. Please note that corresponding changes are included in the joint fundraising rules applicable to presidential candidates. See 11 CFR 9034.8.

Part 106—Allocation of Candidate and Committee Activities

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds

As in the past, many of the issues arising in the 1988 election cycle involved the allocation of expenses to particular states for purposes of the statutory state-by-state spending limitations for Presidential primary candidates receiving matching funds. 2 U.S.C. 441a(b)(1) and 441a(g). In practice, the state limits have the greatest impact in the states holding the first primaries because the spending limits are based on voting age population and do not recognize that the national importance of these primaries extends well beyond the relatively small numbers of delegates at stake. The national significance of the first primary campaigns is shown by their focus on national issues, their coverage by the national and international press, the candidates' appeals to voters nationwide, and the effect these primaries have in winnowing the field of candidates able to continue to campaign in subsequent primaries. The importance of the early primaries has resulted in creative attempts to reduce the amounts allocated to these states for various activities. This, in turn, has necessitated extensive review of committees' allocation practices during the post-primary audits.

For these reasons, the Commission has now decided to make substantial changes in its regulations to try to resolve some of the current problems and to simplify state allocation. One of the two comments received stated that proposals designed to simplify allocation and to treat these as national primaries "makes eminent sense in the light of experience." As discussed below, the other commenter urged the Commission to take several additional steps in this direction.

Under the new state allocation rules, the detailed list of allocable expenditures and exemptions set out in previous 11 CFR 106.2 is replaced with a more limited set of allocable expenditures that are directly related to the campaigns in particular states. All other expenditures are exempted from state allocation, but not from the overall spending limits. The following expenditures are subject to state allocation:

(1) Expenses for campaign advertising distributed through the broadcast media and print media in a particular state, but excluding production costs, national advertising costs and commissions for media purchases. For broadcast and print media buys distributed to more than one state, allocation is based on the proportion of viewers or readers in each state.

(2) Expenditures for mass mailings where more than 500 pieces are sent to a given state and expenditures for shipping other campaign materials to the state.

(3) Expenditures for special telephone programs targeted at a particular state, such as voter registration, get out the vote, fundraising or telemarketing programs.

(4) Expenditures for public opinion polls, except those conducted on a nationwide basis. Allocable costs are based on the number of people interviewed in each state.

(5) Overhead expenses for state offices, but not for national campaign headquarters. Overhead expenses for regional offices are allocated to the next primary state in the region.

Under the new approach, presidential primary candidates are not required to allocate the following categories of expenditures to specific states:

(1) Interstate and intrastate travel and subsistence expenses for the candidate and his or her campaign staff;

(2) Salaries of campaign staff working in a given state; and

(3) Consulting fees for those consulting on national campaign strategy.

Finally, the new rules simplify the application of the fundraising exemption by allowing committees to treat up to 50% of expenditures allocable to each state as exempt fundraising costs, except that 100% of the costs of mass mailings may be treated as fundraising if the materials were mailed more than 28 days before the primary. This approach revises the 28 day rule previously set forth at 11 CFR 110.8(c)(2) so that the timing of fundraising activities is only significant for mass mailings. In addition, the new rules supersede AO 1988–6 in which the Commission concluded that 50% of the costs of broadcasting a particular advertisement may be excluded from state allocation under the fundraising exemption.

These changes also involve reorganizing § 106.2 in the following respects. Paragraph (a) now sets out the general rule that only the expenditures indicated in this section must be allocated to particular states. Previous paragraphs (b) and (c) have been combined into new paragraph (b) describing allocable expenses. The reporting provisions of former paragraph (d) are now located in paragraph (c). The recordkeeping requirements of previous paragraph (e) have been amended and placed in paragraph (d). The revised state allocation rules in § 106.2 address the following types of expenses:

1. *Media expenditures.* The new rules continue the previous approach requiring allocation of print and broadcast advertising, but excluding national advertising and media production costs from state allocation. However, one modification has been made regarding commissions. Under the old rules, § 106.2(b)(2)(i)(B) provided for state-by-state allocation of any commission charged for the purchase of broadcast media, using industry market data. The new rules specify that commissions, fees, and other compensation for the purchase of broadcast or print media need not be allocated to any State.

The NPRM indicated that the Commission has encountered situations in recent audits in which committees have sought to claim very low amounts as media commissions in comparison to the amounts claimed as production costs, and in comparison to the amounts of commissions in previous presidential election cycles. Consequently, comments were sought on how to determine whether the amount paid to the advertising firm or media consultant represents the usual and normal charge for the services provided. Questions may also arise as to whether media commissions are national or state expenditures. One commenter suggested that because of these difficulties, the

Commission should not allocate media commissions against the state spending ceilings. The Commission has decided to take the approach of not allocating media commissions to the state spending limits. The final rules also include new language to clarify that if industry market data is not available to support state allocation of media advertising costs, market data must be obtained from the media carrier.

2. *Mass mailings and shipping other campaign materials.* New § 106.2(b)(2)(ii) specifically requires the allocation of the costs associated with mass mailings of over 500 pieces to a state and the costs of shipping campaign materials to a state. Such costs were allocable under previous § 106.2, unless they could qualify as fundraising expenses. The new language parallels the concept of mass mailings used in the franked mail statute applicable to members of Congress. 39 U.S.C. 3210(a)(6). In contrast to the previous rules, the new language does not require allocation of the costs of producing materials that are subsequently shipped to a state for distribution. The new mass mailing provision operates in conjunction with the Commission's simplified approach to the fundraising exemptions from the state and overall spending limits set out in § 100.8(b)(21) and 110.8(c)(2). Under the new approach, a committee may treat 100% of mass mail expenses and 50% of campaign material shipping costs as counting against the state or overall fundraising exemptions.

3. *Overhead expenditures for state offices and regional offices.* The Commission is now revising § 106.2(b)(2)(iii) to provide further guidance as to how to allocate overhead expenses of regional offices. Overhead expenses will be allocated to the next primary state in the region. If two or more states in the region hold primaries on the same day, overhead expenses should be apportioned equally between these states.

As under the previous rules, allocation is required for state offices, but with certain exceptions, it is not required for national campaign headquarters. These provisions are also reorganized so that the definition of "overhead expenditure" only appears once. Please note that the State office overhead provision has been revised to clarify that the location of the State office is not controlling, and to clarify that allocable expenses include the costs of facilities used for campaign events in a State. Overhead also includes the cost of temporary offices established while the candidate is traveling in the State or in the final weeks before the primary election, as well as expenses paid by campaign staff and subsequently reimbursed by the campaign, such as miscellaneous supplies, copying, printing, and telephone expenses. See 11 CFR 116.5. However, overhead does not include the cost of vehicles leased for extended periods and used in a particular State, unless these costs are allocable for another reason, such as the use of vehicles for polling purposes.

One comment urged the Commission to exclude from allocation overhead expenses related to dealing with the press and organizing campaign trips and events for the candidate. This suggestion was not adopted because drawing distinctions for different categories of overhead is contrary to the Commission's new approach of creating broad categories of allocable expenses and exempt expenses. The newly created exemptions for travel and salary expenses will result in the exclusion of a substantial amount of expenses. In addition, the final rules concerning overhead permit committees to treat 10 percent of State office overhead expenditures as exempt compliance costs which are therefore excludable from the state spending limits.

4. *Expenditures for special telephone programs.* The Commission is now replacing its previous allocation rules for interstate and intrastate telephone calls with new language at § 106.2(b)(2)(iv) requiring allocation only if the intrastate or interstate telephone calls part of a special telephone programs targeted at a particular state. This includes special programs such as voter registration, get out the vote efforts, fundraising, or telemarketing calls designed to increase candidate recognition and support among voters in the state. These costs are allocable irrespective of whether the calls originated inside or outside the state called. The final rules indicate that "targeted at a particular state" means that 10 percent or more of the total telephone calls made in each month are made to that state. The final rules have been modified from the previous proposals to clarify that the allocable expenses for special telephone programs include consultants' fees, related travel costs, and the costs of office rental. This covers both the costs of renting office space for a limited period specifically for the purpose of conducting the program, as well as a *pro rata* portion of the campaign committee's state office or national headquarters if used to conduct the program. As explained below, consultants' fees are allocable if they relate to conducting special telephone programs or polling activity, but they are not allocable if they are charged for consulting on national campaign strategy.

5. *Public opinion polls.* Paragraph (b)(2)(v) of revised § 106.2 continues the previous approach regarding the allocation of polling expenses. Thus, expenditures incurred for public opinion polls covering one state are allocable to that state. Polls covering two or more states continue to be allocable to those states based on the number of people interviewed in each state, but polls conducted on a nationwide basis are not allocable. The revised rules also specify that allocable expenses include the costs of designing and conducting a poll, such as consultants' fees and travel costs.

6. *Costs excluded from allocation.* As indicated above, the revised allocation rules are intended to eliminate several problems encountered by the Commission and by committees under the previous rules. For example, the previous regulations required the allocation of intrastate travel and subsistence expenses, as well as salary expenses, for persons working in a particular state for five consecutive days or more. 11 CFR 106.2(b)(2)(ii) and (iii). The original purpose of these provisions was to simplify the allocation of travel and salary expenses. However, in administering these requirements, the Commission has found that the rule forced committees to create and maintain travel itineraries for many trips by candidates and campaign staff so that the Commission could determine the length of their stays in particular states. In addition, questions arose as to whether travel expenses of independent consultants, as well as travel and salary costs for a committee's vendors' employees, were also subject to this five day rule. Other questions involved the application of the exemption for interstate travel set out at 11 CFR 106.2(c)(4) in situations where campaign staff commuted on a regular basis to and from airports or hotels located across the border in a neighboring state. Consequently, the effects of the five day rule for salaries and intrastate travel, and the interstate travel exemption were to complicate, not to simplify, allocation.

To alleviate these difficulties, the Commission is now excluding all interstate and intrastate travel and salary expenses from state allocation. This will allow the Commission to devote its limited resources to monitoring other aspects of the Matching Fund Program. Moreover, now that salaries are excluded from state

allocation, § 106.2 is being further simplified by eliminating the language that had permitted committees to exclude 10 percent or more of campaign workers' salaries from state allocation as exempt compliance costs. See previous 11 CFR 106.2(c)(5). Please note, however, that salaries continue to be counted against the overall spending limit for primary candidates, and campaigns may continue to deduct 10 percent of salary costs from the overall limits for compliance activities under 11 CFR 9035.1(c).

The Commission has also decided to expressly exclude national consulting fees from allocation. See 11 CFR 106.2(b)(3). This exemption applies to charges for consulting on national campaign strategy, but does not include consulting fees charged for conducting special telephone programs or public opinion polls in a particular state.

7. Recordkeeping and Allocation to the Next Primary State. Specific recordkeeping requirements have been included in several sections to indicate particular kinds of records committees must maintain regarding allocable expenses such as direct mail, shipping costs, regional overhead expenses, special telephone programs and polling. See § 106.2(b)(2)(ii), (iii)(B), (iv), and (v). In addition, the final rules add new language at § 106.2(d) generally requiring the retention of all documents supporting allocations of expenditures to particular states and claims of exemption from allocation under this section. If a presidential campaign committee does not maintain these records, the regulations indicate that the expenditures will be considered to be allocable, and shall be allocated to the state holding the next primary election, caucus or convention after the expenditure is incurred. In an appropriate case, the Commission may also wish to pursue the failure to maintain records under 11 CFR 104.14. One commenter indicated that the purposes served by this provision could be accomplished in a less burdensome way, but did not indicate specifically how this could be accomplished.

Part 110—Contribution and Expenditure Limitations and Prohibitions

Section 110.1 Contributions by Persons Other Than Multicandidate Political Committees (2 U.S.C. 441a(a)(1))

The Commission's administration of the public financing laws has highlighted the need for modifications in the documentation requirements for reattributed and redesignated contributions, which are set forth in paragraph (1) of this section. For example, during the audits of several 1988 presidential campaign committees, problems were encountered in verifying that excessive contributions were reattributed to joint contributors or redesignated for compliance funds within the time periods established by 11 CFR 110.1(b) (5) and (k)(3)

To monitor compliance with the time periods established for obtaining reattributions and redesignations, § 110.1(1) is being revised to require committees to retain documentation demonstrating that redesignations and reattributions are received within 60 days. The new language gives committees a fair amount of flexibility as to the type of evidence they may choose to rely upon to demonstrate timely receipt.

Section 110.8 Presidential Candidate Expenditure Limitations

There are two changes in this section. First, in paragraph (f)(2), the citation to former § 141.2(c) has now been changed to current § 9003.2(c).

The other change involves the operation of the fundraising exemption from the state spending limits, which is set out at § 110.8(c)(2). This exemption has been the focus of a number of recent questions. For example, in Advisory Opinion 1988–6 the Commission was presented with the question of whether part of the costs of broadcasting a candidate's political advertisement in a particular state could be treated as an exempt fundraising expense if the advertisement concluded with a brief message urging the viewers to contribute to the candidate's campaign. On the basis of a previous decision made in one of the 1984 presidential audits, the Commission concluded that it would be reasonable for the candidate to allocate 50 percent of the costs of this advertisement to exempt fundraising, provided the advertisement was not broadcast within 28 days before the state's primary election. See previous 11 CFR 110.8(c)(2).

Since that time, presidential campaigns have tried to broaden the application of the fundraising exemption set forth in previous 11 CFR 106.2(c)(5)(ii) and 110.8(c)(2) in a variety of ways. For example, committees have sought to deduct 50 percent or more of the costs associated with candidate appearances at various political events designed to attract voters on the theory that the incidental distribution of solicitation materials is sufficient to qualify for the fundraising exemption. In other situations, committees have sought to apply the fundraising exemption to the costs of a telemarketing program targeted at voters in a key primary state. However, these telephone calls have tended to focus on voter education and garnering support, and have not always included a fundraising appeal. One committee claimed the fundraising exemption for such telephone calls because follow-up letters requesting contributions were sent to some of the voters contacted. Finally, some committees have sought to exclude part of their broadcast media costs from state allocation as exempt compliance costs incurred for including the disclaimer notice required by 2 U.S.C. 441d(a). They have based this allocation on an analogy to the principle set out in AO 1988–6.

To simplify the application of the fundraising exemption, 11 CFR 110.8(c)(2) is being revised to allow committees to treat up to 50 percent of their expenditures allocable to each state as exempt fundraising costs, and to permit these amounts to be excluded from the committees' total expenditures attributable to the spending limit for each state. The total amount excluded may not exceed 20 percent of the overall spending limit under 11 CFR 9035.1. This new approach revises the previous 28 day rule set forth in this section so that the timing of specific fundraising activities is only significant for mass mailings. The new rules implementing this method of calculating the fundraising exemption supersede AO 1988–6.

One reason for establishing a fundraising deduction of up to 50 percent of the state expenditures is that, as the commenters point out, there may be a fundraising component to many of the committee's campaign activities. Moreover, by adopting this change, the Commission will no longer need to examine disbursements claimed under the exemption to determine whether they are related to fundraising efforts.

The Commission decided to allow 100 percent of the cost of mass mailings to be treated as fundraising, unless the materials were mailed within 28 days before the election. Based on previous practice and experience, the Commission concluded that the primary purpose of mass mailings can be presumed to be fundraising until that point.

The NPRM sought comments regarding other ways to accommodate the special needs of candidates who must devote more time and effort to fundraising during the first two primaries to obtain enough money to be perceived as viable candidates for their party's nomination. One commenter urged the Commission to create an additional 20 percent across the board

exemption from the spending limits for expenditures made in the early primary states on the grounds that a good portion of the campaign activities in the early primary states is directed at a national audience. The Commission believes that treating 50 percent of state expenditures as exempt fundraising costs will alleviate the commenter's concerns. In addition, the Commission expects that the revised state allocation categories will help to offset the amount of expenses previously allocable to the early primary states.

Part 116—Debts Owed by Candidates and Political Committees

Section 116.5 Advances by Committee Staff and Other Individuals

The definition of subsistence expenses, which was previously located in § 106.2(b)(2)(iii), has been moved to paragraph (b)(2) of § 116.5. Section 106.2 has been revised so that subsistence expenses are no longer allocable.

Part 9001—Scope

Section 9001.1 Scope

The references to the title 2 rules have been revised to reflect the addition of new 11 CFR part 116.

Part 9002—Definitions

There are no changes in §§ 9002.1 through 9002.8, § 9002.10, and § 9002.11.

Section 9002.9 Political Committee

The definition of "political committee" is revised by deleting the reference to former § 9012.6, which no longer exists.

Part 9003—Eligibility for Payments

There are no changes in §§ 9003.2 and 9003.6.

Section 9003.1 Candidate and Committee Agreements

Presidential candidates seeking federal funds for their general election campaigns must agree to comply with all of the conditions set forth in paragraph (b) of this section to be eligible to receive these funds. The Commission is now revising these conditions in two respects. First, the candidate agreement provisions are being revised to conform to the new magnetic media rules regarding the production of computerized information on magnetic diskettes or magnetic tapes in accordance with the new technical standards. See 11 CFR 9003.6, 55 FR 26392 (June 27, 1990).

The Commission also sought comments on requiring presidential candidates and their authorized committees to obtain and provide upon the Commission's request records regarding funds received and disbursements made on the candidate's behalf by other committees and organizations associated with the candidate. One commenter believed this requirement was unnecessary because the Commission already has authority to request and, if necessary, subpoena these records. Nevertheless, the Commission has concluded that inclusion of this requirement in the candidate agreements will ensure a more timely production of pertinent records that the Commission needs to audit the candidate's Presidential campaign committee or to make repayment determinations.

The Commission's proposed rules had included a requirement that candidates agree to file alphabetized schedules if their reports are generated from computerized files. One comment objected to the placement of such a requirement in the candidate agreements. The Commission has now decided not to require the filing of alphabetized schedules. Similarly, the Commission considered and rejected a proposal to add new language to the candidate agreement provisions to require committees to verify that they are not spending possibly illegal contributions while they are making inquiries as to the permissibility of these contributions. One commenter indicated that such a requirement would not add anything to existing law.

Section 9003.3 Allowable Contributions

Paragraphs (a)(1) (ii) and (iii) of § 9003.3 are being revised to resolve questions concerning the ability of campaign committees to seek redesignations to legal and accounting compliance funds of contributions properly received during the primary election campaign. The previous rules at 11 CFR 9003.3(a)(1)(iii) permit committees to seek redesignations to the compliance fund if they receive contributions that either exceed the primary election limits or that are made after the party's presidential nominee is chosen. Campaign committees may also transfer to the compliance fund amounts remaining in the primary election account that exceed the amount that must be reimbursed to the U.S. Treasury under 11 CFR 9038.2. See 11 CFR 9003.3(a)(1)(ii). The question presented was whether a campaign committee could obtain redesignations of contributions properly received during the primary election period. This situation only arises if a primary candidate becomes the nominee in the general election, since other rules apply to unsuccessful primary candidates. Accordingly, the Commission sought comments on revising paragraphs (ii) and (iii) of § 9003.3(a)(1) in the following respects. First, language was proposed to permit transfers to legal and accounting compliance funds only if such amounts are not needed to pay remaining primary obligations. In addition, the changes would have prevented committees from having nonexcessive primary contributions redesignated for the general election compliance fund if these primary contributions represent funds that are otherwise repayable to the Presidential Primary Matching Payment Account as surplus funds under 11 CFR 9038.2. The proposed revisions would also have clarified that redesignated contributions will be subject to the contribution limits for the general election, not the primary.

One comment opposed the redesignation restrictions on the grounds that contributions received late in the primary election season were probably intended for general election compliance purposes and should be so used. The Commission has now modified the proposed rule to permit redesignations for the compliance fund provided that the redesignations are received within 60 days of the Treasurer's receipt of the original contribution, and the committee follows the redesignation procedures set forth at 11 CFR 110.1(b) (5) and (1). In addition, the contributions redesignated must represent funds in excess of any amount needed to pay remaining primary expenses. If this requirement is not met, the committee would have to make a transfer back to the primary account to cover such expenses. Finally, contributions may not be redesignated if they have been submitted for matching.

Paragraph (a)(2) of this section is also being revised to permit contributions to a legal and accounting compliance fund to be used to defray the committee's unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff.

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds

This section generally follows previous § 9003.4.

Section 9003.5 Documentation of Disbursements

Section 9003.5(b)(1)(iv) is being revised to indicate that collateral evidence documenting qualified campaign expenses may include evidence that the disbursement is

covered by a preestablished written campaign committee policy, such as a daily travel expense policy. The previous rules had indicated that collateral evidence of a per diem policy would be acceptable. The new, more specific wording is intended to resolve the difficulties surrounding broad per diem policies that do not always provide adequate evidence that the expenses claimed are qualified campaign expenses. The final wording of § 9003.5(b)(1)(iv) represents an improvement over the proposed rules in the NPRM which would simply have required committees to submit collateral evidence showing that "the expenditure is part of an identifiable program or project which is otherwise sufficiently documented." This proposal did not clearly specify what types of documentation would be acceptable. The Commission is also making corresponding revisions to the documentation requirements for primary election committees at 11 CFR 9033.11(b)(1)(iv).

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

There are no changes in §§ 9004.1 through 9004.3, § 9004.5, § 9004.7, or § 9004.8.

Section 9004.4 Use of Payments

In AO 1988–5 questions were raised as to whether a current publicly-funded presidential campaign committee may contribute or loan or transfer funds to another federally funded committee of the same candidate for a previous election cycle for the purpose of paying debts from the earlier campaign. The opinion concluded that such payments are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's NOCO statement under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied.

The attached final rules include new language in § 9004.4(b)(7) applying the conclusion reached in AO 1988–5 to general election candidates. Thus, similar payments from general election funds are nonqualified campaign expenses under § 9004.4(b). Accordingly, they could serve as a basis for a repayment determination under 11 CFR 9007.2. Please note that even though the question presented in AO 1988–5 was framed in terms of treating such payments as contributions, the Commission would regard such a flow of funds as a transfer, not a contribution. See H. Rept. No. 96–422, 96th Cong., 1st Sess. 7 (1979).

Section 9004.6 Reimbursements for Transportation and Services Made Available to Media Personnel

Under this section, candidates may seek reimbursement from media personnel for the costs of providing transportation and services to media representatives accompanying the candidate on campaign trips. These provisions also establish the method to be used in determining how much committees may receive from media personnel for such costs. The Commission is now making several changes to these rules. First, paragraph (a) is being revised to clarify that expenditures incurred for transportation or services made available to Secret Service and national security staff, less any reimbursements received, are qualified campaign expenses but not subject to the overall spending limit. This language allows the campaign to pay unreimbursed Secret Service expenses without having to count such payments toward the spending ceiling. Because such payments would otherwise deplete the public fund, and because such payments might otherwise cause a campaign to exceed the spending limit, legal compliance funds may be used. This approach addresses concerns expressed by one commenter who opposed treating the unreimbursed costs incurred by the campaign as subject to the spending limits. The new wording does not affect the amount that the Secret Service and national security staff pay for such transportation and services, since that is established by other federal agencies.

The second change in § 9004.6 pertains to the method for calculating each media representative's *pro rata* share of the actual cost of the transportation and services made available. Language is being added in paragraph (b) to explain that the total number of individuals to whom such transportation or services were made available includes committee staff, media personnel, Secret Service, national security staff and any other individuals traveling with the candidate.

Section 9004.6(b) permits campaign committees to bill the media 110 percent of the actual *pro rata* cost of providing transportation and services to media personnel. These provisions recognize the difficulties of administering a major transportation program in the midst of a campaign. However, under paragraph (d), committees may not deduct from the overall expenditure limitation amounts received that exceed the actual costs of providing transportation and services to the media plus an additional 3 percent for administrative costs. Paragraph (d) is now being revised to clarify that the amount deducted for the actual costs of providing the transportation and services may not exceed the amount the committee actually expended for such costs.

Another area in which questions have arisen concerns reimbursements from the media exceeding the committee's actual costs plus 3 percent for administrative costs. As noted above, the current rules permit billing the media for up to 110 percent of the actual *pro rata* cost, while allowing a deduction from the expenditure limit of no more than 103 percent of the actual cost. Previously, paragraph (d)(1) indicated that general election campaign committees were required to repay to the United States Treasury all amounts over 103 percent. This provision is now being revised to indicate that the amount to be repaid to the Treasury is the amount between 103 percent and 110 percent. Amounts received that exceed 110 percent will have to be returned to the media, since those amounts exceed the total that can permissibly be billed.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

This section generally follows previous § 9004.9.

Section 9004.10 Sale of Assets Acquired for Fundraising Purposes

This section generally follows previous section 9004.10.

Part 9005—Certification by Commission

There are no changes in section 9005.1.

Section 9005.2 Payments to Eligible Candidates From the Fund

In paragraph (c), the previous references to accounts insured by the Federal Savings and Loan Insurance Corporation have been deleted because these accounts are now insured by the Federal Deposit Insurance Corporation.

Part 9006—Reports and Recordkeeping

There are no changes to § 9006.1 or § 9006.2.

Part 9007—Examination and Audits; Repayments

There are no changes in §§ 9007.3 through 9007.6.

Section 9007.1 Audits

During the course of the audits of certain 1988 campaign committees, the Commission issued subpoenas, and also sought information informally from

committees and third parties. Accordingly, new language is now being added to 11 CFR 9007.1(b)(1)(v) to inform candidates that the investigative procedures set forth at 11 CFR 111.11 through 111.15, including the issuance of subpoenas, may be invoked in appropriate cases. Please note that the final rules have been modified to refer to the Commission's general authority to issue subpoenas and orders under 2 U.S.C. 437d(a)(1) and (3).

Section 9007.2 Repayments

The Commission's rules at 11 CFR 9007.2(a)(2) indicate that candidates will be notified of repayment determinations as soon as possible, but not later than three years after the end of the expenditure report period. New language is now included in the final rules to explain that the Commission considers the issuance of its interim audit report to constitute notification for purposes of the three year period.

Paragraph (b)(2)(iii) has been revised to clarify the amount representing total deposits under this section which is used to determine the repayment specified in 11 CFR 9007.2(b)(2). A similar clarification is included in 11 CFR 9038.2.

Part 9012—Unauthorized Expenditures and Contributions

There are no changes in part 9012.

Part 9031—Scope

Section 9031.1 Scope

The references to the title 2 rules have been revised to reflect the addition of new 11 CFR part 116.

Part 9032—Definitions

There are no changes in part 9032.

Part 9033—Eligibility for Payments

There are no changes in §§ 9033.2 through 9033.4, §§ 9033.6 through 9033.9 and § 9033.12.

Section 9033.1 Candidate and Committee Agreements

Presidential candidates seeking federal funds for their primary election campaigns must agree to comply with all of the conditions set forth in paragraph (b) of this section to be eligible to receive these funds. The Commission is now revising these conditions in several respects. First, the candidate agreement provisions are being revised to conform to the new magnetic media rules regarding the production of computerized information on magnetic diskettes or magnetic tapes in accordance with the new technical standards. See 11 CFR 9033.12, 55 FR 26392 (June 27, 1990).

The Commission also sought comments on requiring presidential candidates and their authorized committees to obtain and provide upon the Commission's request records regarding funds received and disbursements made on the candidate's behalf by other committees and organizations associated with the candidate. One commenter believed this requirement was unnecessary because the Commission already has authority to request and, if necessary, subpoena these records. Nevertheless, the Commission has concluded that inclusion of this requirement in the candidate agreements will ensure a more timely production of pertinent records that the Commission needs to audit the candidate's Presidential campaign committee or to make repayment determinations.

The Commission's proposed rules had included a requirement that candidates agree to file alphabetized schedules if their reports are generated from computerized files. One comment objected to the placement of such a requirement in the candidate agreements. The Commission has now decided not to require the filing of alphabetized schedules. Similarly, the Commission considered and rejected a proposal to add new language to the candidate agreement provisions to require committees to verify that they are not spending possibly illegal contributions while they are making inquiries as to the permissibility of these contributions. One commenter indicated that such a requirement would not add anything to existing law.

Section 9033.5 Determination of Ineligibility Date

Under the Matching Payment Account Act, a candidate's continued eligibility to receive matching funds is based upon receipt of at least 10 percent of the popular vote cast in the party's primary elections if the candidate has permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission that he or she will not be an active candidate in a particular primary. 26 U.S.C. 9033(c). During the 1988 primary election cycle, a question arose regarding the effect of a candidate's certification that he or she will not be an active candidate in a primary if the candidate subsequently receives 10 percent or more of the popular votes cast in that primary. Consequently, the Commission is now revising 11 CFR 9033.5(b) to clarify that if a candidate certifies his or her nonparticipation in a particular election, that election will not be counted in determining the candidate's date of ineligibility regardless of whether he or she receives more or less than 10 percent of the popular vote. Thus the election will not be used to disqualify such candidates receiving less than 10 percent, and it will not count to the advantage of candidates exceeding the 10 percent cutoff.

Section 9033.10 Procedures for Initial and Final Determinations

This section generally follows previous § 9033.10.

Section 9033.11 Documentation of Disbursements

Section 9033.11(b)(1)(iv) is being revised to indicate that collateral evidence documenting qualified campaign expenses may include evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a daily travel expense policy. The previous rules had indicated that collateral evidence of a per diem policy would be acceptable. The new, more specific wording is intended to resolve two difficulties. First, a canceled check in combination with a broad per diem policy does not always provide adequate evidence that the expenses claimed are qualified campaign expenses. In addition, a per diem policy does not always provide sufficient information to ascertain whether the committee allocated the expenses correctly for purposes of the state spending limits. By specifying a "daily travel expense policy," the new rules distinguish travel expenses from other campaign costs paid for by individuals that are allocable to a particular state. The second concern should no longer be problematic because the changes to § 106.2 no longer require state allocation of travel costs. The final wording of § 9033.11(b)(1)(iv) represents an improvement over the proposed rules in the NPRM which would simply have required committees to submit collateral evidence showing that "the expenditure is part of an identifiable program or project which is otherwise sufficiently documented to permit (state) allocation." One commenter expressed the concern that this proposal did not specify what types of documentation would be acceptable. The Commission is also making corresponding revisions to the documentation requirements for general election committees at 11 CFR 9003.5(b)(1)(iv).

Part 9034—Entitlements

Section 9034.1 Candidate Entitlements

The Commission has previously notified both the President and Congress

of a projected shortage in the Presidential Election Campaign Fund for the 1992 presidential election cycle. The priorities established by the public financing statutes indicate that a shortfall would affect the availability of matching funds for primary candidates before it would affect general election or convention financing. See 26 U.S.C. 9006(c), 9008(a) and 9037. Accordingly, the Commission is adding to § 9034.1(a) of its regulations a cross-reference to 26 U.S.C. 9037 and 11 CFR part 9037 to alert candidates that their receipt of matching funds could be affected by the amount of funds available in the matching payment account. In addition, the Commission has been working with the Treasury Department on implementing the Secretary of the Treasury's statutory obligation to achieve an equitable distribution of the funds available. Now that the Treasury Department has promulgated final rules in this area, the Commission has initiated another rulemaking to make necessary conforming changes to its existing procedures. See Notice of Proposed Rulemaking, 56 FR 29372 (June 26, 1991).

Section 9034.2 Matchable Contributions

New paragraph (c)(1)(iii) has been added to clarify that contributions reattributed to a joint contributor must meet the reattribution requirements of 11 CFR 110.1(k), and must be accompanied by the documentation described in 11 CFR 110.1(l).

Section 9034.3 Non-Matchable Contributions

New paragraph (k) states that contributions redesignated for a different election or redesignated for a legal and accounting compliance fund are not matchable. See 11 CFR 9003.3(a).

Section 9034.4 Use of Contributions and Matching Payments

A candidate's eligibility to receive federal matching funds is predicated upon his or her ability to receive at least 10 percent of the vote in each primary election. The Presidential Primary Matching Payment Account Act specifically recognizes that a candidate who has fallen below this level of support may reestablish eligibility by obtaining at least 20 percent of the votes cast in a subsequent primary. 26 U.S.C. 9033(c)(4)(B). However, the previous regulations did not provide a method for a candidate to use private funds to continue to campaign beyond the date of ineligibility without this affecting the candidate's entitlement to matching funds, since all funds in a publicly funded committee's accounts are considered to be commingled. See, *Kennedy for President Committee* v. *FEC*, 734 F.2d 1558, 1565 at n.11 (D.C. Cir. 1984); *See, also Reagan for President Committee* v. *FEC*, 734 F.2d 1569 (D.C. Cir. 1984). Moreover, under the previous rules, in calculating a candidate's statement of net outstanding campaign obligations ("NOCO"), a candidate's private contributions were applied to eliminate the pre-date of ineligibility debt before they were used to pay debts incurred in continuing to campaign. Thus, a candidate could not separate out private funds to be used to continue to campaign. As a result, a candidate who continued to raise private funds after the date of ineligibility may have been required to make a repayment based on matching funds received in excess of his or her entitlement or based on nonqualified campaign expenses associated with continuing to campaign.

The Commission has now revised § 9034.4(a)(3)(ii) to allow a candidate to use post-ineligibility contributions to continue campaigning after the date of ineligibility without such activity resulting in a repayment of funds in excess of entitlement or a repayment of funds used for nonqualified campaign expenses. Compare new 11 CFR 9038.2(b)(2)(ii)(D). Under the new approach, the candidate's NOCO is "frozen" as of the candidate's date of ineligibility. Contributions received after the date of ineligibility that are used to continue to campaign may be submitted for matching. The candidate may continue to receive the same proportion of matching funds to defray NOCO as the candidate received before the date of ineligibility. The amount of matching funds received will be added to the post-ineligibility contributions to determine the amount of the candidate's remaining entitlement. Post-ineligibility matching fund payments may be used to defray the candidate's NOCO, but may not be used to defray the costs of continuing to campaign unless the candidate is able to reestablish eligibility under 11 CFR 9033.8. Post-ineligibility contributions are subject to the limitations, prohibitions, recordkeeping and reporting requirements. As under the previous rules, the candidate is not eligible to receive matching funds for winding down costs until the candidate is no longer continuing to campaign. Expenditures made for purposes of continuing to campaign are still counted against the spending limits, since the candidate's previous acceptance of matching funds was based on his or her agreement to comply with the spending limits. One comment supported efforts to allow for the raising and spending of private funds to continue to campaign following a determination of ineligibility. The new provisions reflect the Commission's intention to treat candidates who continue to campaign as fairly as those who withdraw as of the date of ineligibility.

In AO 1988–5 questions were raised as to whether a current publicly-funded presidential campaign committee may contribute or loan or transfer funds to another federally funded committee of the same candidate for a previous election cycle for the purpose of paying debts from the earlier campaign. The opinion concluded that such payments are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's NOCO statement under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied. The attached final rules include new language in section 9034.4(b)(6) reaffirming the conclusion reached in AO 1988–5 that these payments are not qualified campaign expenses. Accordingly, they could serve as a basis for a repayment determination under 11 CFR 9038.2. Please note that even though the question presented in AO 1988–5 was framed in terms of treating such payments as contributions, the Commission would regard such a flow of funds as a transfer, not a contribution. See H. Rept. No. 96–422, 96th Cong., 1st Sess. 7 (1979).

New paragraph (b)(7) indicates that payments for expenses subject to the state spending limits will not be treated as qualified campaign expenses if the committee's records do not provide sufficient information to accurately allocate the expenses to particular states. This new provision may apply, for example, if the records do not show when an allocable expense was incurred.

Finally, paragraph (d) of this section has been reorganized and a new sentence has been added to assist the reader in locating the provisions regarding transfers to a legal and accounting compliance fund. 11 CFR 9003.3(a)(1).

Section 9034.5 Net Outstanding Campaign Obligations

This section generally follows previous § 9034.5.

Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel

Under this section, candidates may seek reimbursement from media personnel for the costs of providing transportation and services to media representatives accompanying the candidate on campaign trips. These provisions also establish the method to be used in determining how much committees may receive from media personnel for such costs. The Commission is now making several changes to these rules. First, paragraph (a) is being revised to clarify that expenditures incurred for transportation or services made available to Secret Service and national security staff, less any reimbursements received, are qualified campaign expenses but not subject to the overall spending limits. This language allows the campaign to pay unreimbursed Secret Service expenses without having to count such payments toward the spending ceiling. This approach addresses concerns expressed by one commenter who opposed treating the unreimbursed costs incurred by the campaign as subject to the spending limits. The new wording does not affect the amount that the Secret Service and national security staff pay for such transportation and services, since that is established by other federal agencies.

The second change in § 9034.6 pertains to the method for calculating each media representative's *pro rata* share of the actual cost of the transportation and services made available. Language is being added in paragraph (b) to explain that the total number of individuals to whom such transportation or services were made available includes committee staff, media personnel, Secret Service, national security staff and any other individuals traveling with the candidate.

Section 9034.6(b) permits campaign committees to bill the media 110 percent of the actual *pro rata* cost of providing transportation and services to media personnel. These provisions recognize the difficulties of administering a major transportation program in the midst of a campaign. However, under paragraph (d), committees may not deduct from the overall expenditure limitation amounts received that exceed the actual costs of providing transportation and services to the media plus an additional 3 percent for administrative costs. Paragraph (d) is now being revised to clarify that the amount deducted for the actual costs of providing the transportation and services may not exceed the amount the committee actually expended for such costs.

Another area in which questions have arisen concerns reimbursements from the media exceeding the committee's actual costs plus 3 percent for administrative costs. As noted above, the current rules permit billing the media for up to 110 percent of the actual *pro rata* cost, while allowing a deduction from the expenditure limit of no more than 103 percent of the actual cost. New language is now being added to paragraph (d) to indicate that the amount between 103 percent and 110 percent of the actual cost must be repaid to the Treasury, and that amounts received that exceed 110 percent will have to be returned to the media on a *pro rata* basis. This approach is consistent with the media reimbursement rules for general election candidates, as set out at 11 CFR 9004.6(d). It recognizes that reimbursements from the media may cover actual transportation costs and the costs of administering the program, but should not result in a primary candidate's committee making a profit.

Section 9034.7 Allocation of Travel Expenditures

There are no changes in this section.

Section 9034.8 Joint Fundraising

The Commission is revising the joint fundraising rules set out at 11 CFR 9034.8 in several respects. First, paragraph (b)(1) now specifies that if committees participating in a joint fundraiser elect to form a separate committee to serve as the fundraising representative, the separate committee cannot be a participant in any other joint fundraising efforts but may conduct more than one joint fundraising effort for the participating committees. This change corrects two problems. First, in cases where this has occurred, there was no explicit allocation formula for determining the amounts to be distributed to each of the original participating committees. Secondly, there has been confusion as to the amount that may be contributed to the fundraising representative for distribution among the participating committees. If a series of fundraising events or activities is held, the expenses must be allocated on a per event basis under paragraph (c)(8)(i)(C) of this section.

New language is also being added to paragraph (c)(1) to require the allocation formula to indicate the amount or percentage of each contribution that will be allocated to each participant. Thus, the formula may not state that a fixed amount of the proceeds will be allocated to a specific participant, or that contributions will be allocated to one participant because the contributions are matchable. Section 9034.8(c)(7)(i) does not permit the committee to use a joint fundraiser to maximize the matchability of contributions. However, the formula may state, for example, that the first $250 of each contribution will be allocated to a particular candidate. The new rules also delete the previous language in paragraph (c)(1) indicating that the joint fundraising participants must use the formula to allocate fundraising expenses. This change was necessary because paragraph (c)(8) indicates that the joint fundraising representative allocates expenses based on the percentage of total receipts allocated to each participant. Similarly, paragraph (c)(7)(ii) is being amended to indicate that reallocation of contributions is the responsibility of the joint fundraising representative, not the participating candidates. Please note that corresponding changes are included in the joint fundraising rules applicable to nonpresidential candidates. See 11 CFR 102.17.

Part 9035—Expenditure Limitations

Section 9035.1 Campaign Expenditure Limitation

The compliance and fundraising exemptions set out in § 9035.1(c) are being revised to reflect the changes in §§ 100.8(b)(21) and 110.8(c)(2) in determining the amount excluded from the overall spending limit for exempt fundraising activity.

Section 9035.2 Limitation on Expenditures From Personal or Family Funds

There are no changes in § 9035.2.

Part 9036—Review of Submission and Certification of Payments by Commission

There are no changes in §§ 9036.3 through 9036.6.

Section 9036.1 Threshold Submission

New paragraph (b)(2) has been added to this provision to require all committees that have computerized their contributor lists to submit computerized magnetic media at the time they make their threshold submission for matching fund payments. See the Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. Please note that these requirements also apply to additional submissions governed by § 9036.2. Previously, the submission of computerized information

at the matching fund stage was optional. Now that the Commission has prepared new technical standards for the submission of computer tapes and diskettes, the Commission may be able to process all matching fund submissions more efficiently. See 11 CFR 9033.12. Please note that this change does not require presidential campaign committees to computerize part or all of their financial records if they do not wish to do so.

New paragraph (b)(6) requires all threshold submissions to include a list of refunded contributions, regardless of whether they were submitted for matching. One commenter expressed concerns regarding the burdensomeness of such a rule. This requirement is included in the final rules because the relevant information is needed to ensure that refunded contributions are not submitted for matching, and are properly reported.

Section 9036.2 Additional Submissions for Matching Fund Payments

New paragraph (b)(1)(iv) has been added to require nonthreshold submissions to include a list of refunded contributions, regardless of whether they were submitted for matching. Although one commenter expressed concerns regarding the burdensomeness of such a rule, the requirement is included in the final rules to ensure that refunded contributions are not submitted for matching, and are properly reported.

The Commission has also decided that during limited periods of time, it will use a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15 percent of the amount required. Please note that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted. Submissions would not be considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15 percent or less of the amount requested. The new policy is not reflected in the final version of 11 CFR 9036.2 (c) and (d), and 9038.4(a), which follows, but is included in a separate draft of those sections found in the Commission's Notice of Proposed Rulemaking, which proposes broader changes to the Commission's matching fund submission and certification procedures. See 56 FR 29372 (June 26, 1991).

Part 9037—Payments

There are no changes in §§ 9037.1 and 9037.2.

Section 9037.3 Deposits of Presidential Primary Matching Funds

This section has been slightly modified to update the language regarding campaign depositories. It now parallels the revised general election provisions at 11 CFR 9005.2(c).

Part 9038—Examination and Audits

There are no changes in §§ 9038.4 through 9038.6.

Section 9038.1 Audit

During the course of the audits of certain 1988 campaign committees, the Commission issued subpoenas, and also sought information informally from committees and third parties. Accordingly, new language is now being added to 11 CFR 9038.1(b)(1)(v) to inform candidates that the investigative procedures set forth at 11 CFR 111.11 through 111.15, including the issuance of subpoenas, may be invoked in appropriate cases. Please note that the final rules have been modified to refer to the Commission's general authority to issue subpoenas and orders under 2 U.S.C. 437d(a) (1) and (3).

Section 9038.2 Repayments

The Commission has decided to revise several aspects of the repayment process for presidential primary candidates set forth at 11 CFR 9038.2. First, the Commission's rules at 11 CFR 9038.2(a)(2) indicate that candidates will be notified of repayment determinations as soon as possible, but not later than three years after the end of the matching payment period. New language is now included in the final rules to explain that the Commission considers the issuance of its interim audit report to constitute notification for purposes of the three year period.

The Commission's regulations at 11 CFR 9038.2(b)(1) require primary candidates to repay matching funds received which are in excess of the amount to which the candidates are entitled. A candidate's committee may receive matching funds in excess of the amount to which it is entitled if, for example, it receives matching funds after the candidate's date of ineligibility and the candidate had no net outstanding campaign obligations to justify the amount of a post-ineligibility payment. This can occur if the candidate includes on his or her NOCO statement accounts payable for nonqualified campaign expenses. In such a situation, the Commission's audit may result in the correction of the NOCO statement and a dollar for dollar repayment of the amount determined to exceed the candidate's entitlement.

In addition to the (b)(1) repayment, paragraph (b)(2) of § 9038.2 requires repayment of a portion of all nonqualified campaign expenses incurred and paid between the campaign's date of inception and the date on which the committee's accounts no longer contain any matching funds. Thus, concerns have been raised that if a candidate's entitlement was artificially increased as a result of nonqualified campaign expenses, and a 100 percent repayment is sought under (b)(1), these nonqualified campaign expenses should be excluded when calculating the amount repayable under (b)(2), to avoid seeking repayment twice for the same funds, or "double counting" them.

The Commission has now concluded that the public funding statutes establish separate bases for seeking repayments of payments in excess of a candidate's entitlement and repayments of amounts spent for nonqualified campaign expenses. Accordingly, new language has been added to the final rules to indicate that repayment determinations will be sought under § 9038.2(b)(2) for nonqualified campaign expenses paid before the point when the committee's accounts no longer contain matching funds, regardless of whether a separate repayment determination is sought under § 9038.2(b)(1).

The final rules also address situations in which primary candidates have exceeded both the spending limits for a particular state and the overall spending limit. 11 CFR 9038.2(b)(2)(v). Disbursements in excess of these

spending limits are considered nonqualified campaign expenses. The Commission sought comments on two possible methods for calculating the candidate's repayment obligations under 11 CFR 9038.2(b)(2) in this situation. The first approach treats the state expenditure limitations and the overall expenditure limitation as separate for repayment purposes, but avoids dual repayment for disbursements that exceed both limits. Thus, this method operates by assuming that expenditures should count against the spending limits in the order in which they are paid. This permits identification of those particular expenditures that exceed both limits. To avoid double counting, the total amount of disbursements exceeding both limits are then subtracted from the excessive amount repayable under one limit or the other. Although these disbursements are considered nonqualified campaign expenses for two reasons, they are subject to repayment only once.

In contrast, the second approach considered by the Commission simply calculates the repayment using only the larger of the two excessive amounts. The Commission has used the second method in an audit from the 1984 Presidential election cycle. This method assumes that the same disbursements cause both overages, since few, if any, committees that exceed the overall spending limit are able to stay within the state-by-state spending limits. For example, where the amount in excess of the overall limit is larger than the amount in excess of the state limits, the second approach operates by denoting the amount in excess of the state-by-state limitations as a subset of the overall expenditure limitation, regardless of when the expenditures were paid by the committee. To avoid the possibility of double counting, the expenditures that exceed the state-by-state limits are subsumed into the expenditures that exceed the overall limit. Conversely, if the amount of expenditures exceeding the overall limits is the lesser amount, it would be subsumed into the amount of expenditures exceeding the state limits.

The Commission has now concluded that the second method is the better approach. Accordingly, new § 9038.2(b)(2)(v) incorporates this method.

New paragraph (b)(2)(ii)(D) has also been added to indicate that the use of federal funds for continuing to campaign after a candidate's date of ineligibility will be considered nonqualified campaign expenses. See revised 11 CFR 9034.4(a)(3)(ii).

The Commission is now adding language to 11 CFR 9038.2(b)(4) to specifically require the repayment of net income received from the investment of surplus public funds after the candidate's date of ineligibility. The Commission's rules at 11 CFR 9004.5, which pertain to general election candidates, already provide for the repayment of interest and other forms of income derived from the investment of public funds. Please note, however, that the receipt of such investment income before a primary candidate's date of ineligibility simply reduces the candidate's net outstanding campaign obligations and increases the amount of any surplus repayment.

The new rules also clarify that the amount representing total deposits under 11 CFR 9038.3(c)(2) is used to determine the repayment specified in 11 CFR 9038.2(b)(2)(iii). A similar clarification has been included in 11 CFR 9007.2(b)(2)(iii). Finally, § 9038.2(b)(2)(iii) is amended to clarify that the last-in, first-out method of determining when a committee's account no longer contains matching funds only applies to committees that received matching funds after the candidate's date of ineligibility.

Section 9038.3 Liquidation of Obligations; Repayment

This section generally follows previous § 9038.3.

Part 9039—Review and Investigation Authority

There are no changes in this part.

List of Subjects

11 CFR Part 100

Elections, Political committees and parties.

11 CFR Part 102

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

11 CFR Part 106

Campaign funds, Political candidates, Political committees and parties.

11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Parts 9001–9005

Campaign funds, Elections, Political candidates.

11 CFR Part 9006

Campaign funds, Elections, Political candidates, Reporting requirements.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9012

Elections, Political candidates, Political committees and parties.

11 CFR Parts 9031–9035

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

11 CFR Parts 9038–9039

Administrative practice and procedure, Campaign funds, Political candidates.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules. Further, any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, subchapters A, E and F, chapter I of title 11 of the Code of Federal Regulations are amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising paragraph (b)(21) of § 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C 431(9)).

* * * * *

(b) * * *

(21)(i) Any costs incurred by a candidate or his or her authorized

committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, or by a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. These costs shall, however, be reported as disbursements pursuant to 11 CFR part 104.

(ii) For a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2), "in connection with the solicitation of contributions" means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs associated with a fundraising reception or dinner.

(iii) For a candidate who has been certified to receive Presidential Primary Matching Fund Payments, the costs that may be exempted as fundraising expenses under this section shall not exceed 20% of the overall expenditure limitation under 11 CFR 9035.1, and shall equal the total of:

(A) All amounts excluded from the state expenditure limitations for exempt fundraising activities under 11 CFR 110.8(c)(2), plus

(B) An amount of costs that would otherwise be chargeable to the overall expenditure limitation but that are not chargeable to any state expenditure limitation, such as salary and travel expenses. See 11 CFR 106.2.

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

3. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

4. 11 CFR 102.17 is amended by revising paragraphs (a)(1)(i), (c)(1) and (c)(6)(ii) and by adding paragraph (c)(7)(i)(C) to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* (1)(i) Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations. The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate for federal office participating in the joint fundraising activity. If the participants establish a separate committee to act as the fundraising representative, the separate committee shall not be a participant in any other joint fundraising effort, but the separate committee may conduct more than one joint fundraising effort for the participants.

* * * * *

(c) * * *

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

* * * * *

(6) * * *

(ii) Designated contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative absent the prior written permission of the contributor.

* * * * *

(7) * * *

(i) * * *

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

5. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

6. 11 CFR part 106 is amended by revising § 106.2 to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of presidential primary candidates receiving matching funds.

(a) *General*—(1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR parts 9031 *et seq.* The expenditures described in 11 CFR 106.2(b)(2) shall be allocated to a particular State if incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among States*—(1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an expenditure described in 11 CFR 106.2(b)(2) and incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis. The total amount allocated to a particular State may be reduced by the amount of exempt fundraising expenses for that State, as specified in 11 CFR 110.8(c)(2).

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures*—(A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of

printed advertisements distributed in more than one State shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required if less than 3% of the total estimated readership of the publication is in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, shall be made using industry market data. If industry market data is not available, the committee shall obtain market data from the media carrier transmitting the advertisement(s).

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(E) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(F) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(G) *Commissions.* Expenditures for commissions, fees and other compensation for the purchase of broadcast or print media need not be allocated to any State.

(ii) *Expenditures for mass mailings and other campaign materials.* Expenditures for mass mailings of more than 500 pieces to addresses in the same State, and expenditures for shipping campaign materials to a State, including pins, bumperstickers, handbills, brochures, posters and yardsigns, shall be allocated to that State. For purposes of this section, "mass mailing" includes newsletters and other materials in which the content of the materials is substantially identical. Records supporting the committee's allocations under this section shall include: For each mass mailing, documentation showing the total number of pieces mailed and the number mailed to each state or zip code; and, for other campaign materials acquired for use outside the State of purchase, records relating to any shipping costs incurred for transporting these items to each State.

(iii) *Overhead expenditures*—(A) *Overhead expenditures of State offices and other facilities.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of committee offices whose activities are directed at a particular State, and the costs of other facilities used for office functions and campaign events, shall be allocated to that State. An amount that does not exceed 10% of office overhead expenditures for a particular State may be treated as exempt compliance expenses, and may be excluded from allocation to that State.

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to the State holding the next primary election, caucus or convention in the region. The committee shall maintain records to demonstrate that an office operated on a regional basis. These records should show, for example, the kinds of programs conducted from the office, the number and nature of contacts with other States in the region, and the amount of time devoted to regional programs by staff working in the regional office.

(C) *Overhead expenditures of national campaign headquarters.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State, except as provided in paragraph (b)(2)(iv) of this section.

(D) *Definition of overhead expenditures.* For purposes of 11 CFR 106.2(b)(2)(iii), overhead expenditures include, but are not limited to, rent, utilities, equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intrastate phone calls other than charges related to a special program under 11 CFR 106.2(b)(2)(iv). Inter-state calls are not included in "telephone service base charges." Overhead expenditures also include the costs of temporary offices established while the candidate is traveling in the State or in the final weeks before the primary election, as well as expenses paid by campaign staff and subsequently reimbursed by the committee, such as miscellaneous supplies, copying, printing and telephone expenses. See 11 CFR 116.5.

(iv) *Expenditures for special telephone programs.* Expenditures for special telephone programs targeted at a particular State, including the costs of designing and operating the program, the costs of installing or renting telephone lines and equipment, toll charges, personnel costs, consultants' fees, related travel costs, and rental of office space, including a *pro rata* portion of national, regional or State office space used for such purposes, shall be allocated to that State based on the percentage of telephone calls made to that State. Special telephone programs include voter registration, get out the vote efforts, fundraising, and telemarketing efforts conducted on behalf of the candidate. A special telephone program is targeted at a particular State if 10% or more of the total telephone calls made each month are made to that State. Records supporting the committee's allocation of each special telephone program under this section shall include either the telephone bills showing the total number of calls made in that program and the number made to each State; or, a copy of the list used to make the calls, from which these numbers can be determined.

(v) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a public opinion poll on a nationwide basis, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State. Expenditures incurred for the taking of a public opinion poll include consultant's fees, travel costs and other expenses associated with designing and conducting the poll. Records supporting the committee's allocation under this section shall include documentation showing the total number of people contacted for each poll and the number contacted in each State.

(3) *National consulting fees.* Expenditures for consultants' fees need not be allocated to any State if the fees are charged for consulting on national campaign strategy. Expenditures for consultants' fees charged for conducting special telephone programs and public opinion polls shall be allocated in accordance with paragraphs (b)(2) (iv) and (v) of this section.

(c) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(d) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. In addition to the records specified in paragraph (b) of this section, the treasurer shall retain records supporting the committee's allocations of expenditures to particular States and claims of exemption from allocation under this section. If the records supporting the allocation or claim of exemption are not retained, the expenditure shall be considered allocable and shall be allocated to the State holding the next primary election, caucus or convention after the expenditure is incurred.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

7. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

8. 11 CFR part 110 is amended by revising paragraph (1) of § 110.1 to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(1) *Supporting evidence.* (1) If a political committee receives a contribution designated in writing for a particular election, the treasurer shall retain a copy of the written designation, as required by 11 CFR 110.1(b)(4) or 110.2(b)(4), as appropriate. If the written designation is made on a check or other written instrument, the treasurer shall retain a full-size photocopy of the check or written instrument.

(2) If a political committee receives a written redesignation of a contribution for a different election, the treasurer shall retain the written redesignation provided by the contributor, as required by 11 CFR 110.1(b)(5) or 110.2(b)(5), as appropriate.

(3) If a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor, as required by 11 CFR 110.1(k).

(4) If a political committee chooses to rely on a postmark as evidence of the date on which a contribution was made, the treasurer shall retain the envelope or a copy of the envelope containing the postmark and other identifying information.

(5) If a political committee does not retain the written records concerning designation required under 11 CFR 110.1(1)(2), the contribution shall not be considered to be designated in writing for a particular election, and the provisions of 11 CFR 110.1(b)(2)(ii) or 110.2(b)(2)(ii) shall apply. If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(1) (2), (3) or (6), the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

(6) For each written redesignation or written reattribution of a contribution described in paragraph (b)(5) or paragraph (k)(3) of this section, the political committee shall retain documentation demonstrating when the written redesignation or written reattribution was received. Such documentation shall consist of:

(i) A copy of the envelope bearing the postmark and the contributor's name, or return address or other identifying code; or

(ii) A copy of the written redesignation or written reattribution with a date stamp indicating the date of the committee's receipt; or

(iii) A copy of the written redesignation or written reattribution dated by the contributor.

* * * * *

9. 11 CFR part 110 is amended by revising paragraph (c)(2) of § 110.8 to read as follows:

§ 110.8 Presidential candidate expenditure limitations.

* * * * *

(c) * * *

(2) The candidate may treat an amount that does not exceed 50% of the candidate's total expenditures allocable to a particular State under 11 CFR 106.2 as exempt fundraising expenses, and may exclude this amount from the candidate's total expenditures attributable to the expenditure limitations for that State. The candidate may treat 100% of the cost of mass mailings as exempt fundraising expenses, unless the mass mailings were mailed within 28 days before the state's primary election, convention or caucus. The total of all amounts excluded for exempt fundraising expenses shall not exceed 20% of the overall expenditure limitation under 11 CFR 9035.1.

* * * * *

10. 11 CFR 110.8(f)(2) is amended by removing the citation to "§ 141.2(c)" and adding, in its place, a citation to "11 CFR 9003.2(c)."

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

11. The authority citation for part 116 continues to read as follows:

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b and 451.

12. 11 CFR part 116 is amended by revising paragraph (b)(2) of § 116.5 to read as follows:

§ 116.5 Advances by committee staff and other individuals.

* * * * *

(b) * * *

(2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement. In addition, "subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

* * * * *

13. 11 CFR parts 9001 through 9007 is revised to read as follows:

PART 9001—SCOPE

Sec.
9001.1 Scope.

Authority: 26 U.S.C. 9009(b).

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR parts 100 through 116). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 116).

PART 9002—DEFINITIONS

Sec.
9002.1 Authorized committee.
9002.2 Candidate.

Sec.

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means with respect to any presidential election, an individual who—

(1) Has been nominated by a major party for election to the office of President of the United States or the office of Vice President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

Eligible candidates means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR part 9003.

§ 9002.5 Fund.

Fund means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

Major party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, *candidate* means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

Minor party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, *candidate* means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

New party means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, *political committee* means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States.

§ 9002.10 Presidential election.

Presidential election means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) *Qualified campaign expense* means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been pre-empted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further

the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* or 26 U.S.C. 9001, *et seq.* shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

Expenditure report period means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate. (a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

Contribution has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

Secretary means the Secretary of the Treasury.

§ 9002.15 Political party.

Political party means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will

provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1) that meet the requirements of 11 CFR 9003.6(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(5) Agree that they and their authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(6) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR part 9007.

(7) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(8) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR parts 100–116, and 9001–9012.

(9) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major party candidates.* To be eligible to receive payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and new party candidates.* To be eligible to receive any payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of $50,000 in the aggregate.

(1) For purposes of this section, the term *immediate family* means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms *personal funds* and *personal funds of his or her immediate family* mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits

of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates*—(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114, and 115.

(ii) Funds received during the matching payment period that are remaining in a candidate's primary election account, which funds are in excess of any amount needed to pay remaining primary expenses or any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR part 110 and used for any purpose permitted under this section. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the legal and accounting compliance fund.

(iii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if the candidate obtains the contributor's redesignation in accordance with 11 CFR 110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if—

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(B) The redesignations are received within 60 days of the Treasurer's receipt of the contributions;

(C) The requirements of 11 CFR 110.1 (b)(5) and (l) regarding redesignations are satisfied; and

(D) The contributions have not been submitted for matching.

All contributions so redesignated and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(b)(2)(i).

(2) *Uses.* (i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software;

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund; and

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with title 2 and chapter 95 of title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 or chapter 95 of title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function,

such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be

considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR part 104 and 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c) (6) and (7) and shall report such disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1.

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4)(i) A candidate who has received federal funding under 11 CFR part 9031 *et seq.*, may borrow from his or her primary election committee(s) an amount not to exceed the residual balance projected to remain in the

candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her $50,000 limit, to defray such expenditures.

(c) *Deposit and disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a canceled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets—*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3 (b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

(5) Records used to prepare statements of net outstanding qualified campaign expenses;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR part 9005 in an amount which, in the aggregate, shall not exceed $20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1.

The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New party candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and new party candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were later settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(3) *Expenditures incurred after the close of the expenditure report period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005. Penalties may be paid from contributions in the candidate's legal and accounting compliance fund, in accordance with 11 CFR 9003.3(a)(2)(i)(C). Additional amounts may be received and expended to pay such penalties, if necessary. These funds shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Solicitation expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005.

(6) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(7) *Payments to other authorized committees.* Payments, including transfers, contributions and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses and, except for costs relating to Secret Service personnel or national security staff, subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee

expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) of this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a).

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates receiving post-election funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a) (1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: All contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the candidate's authorized committee(s) in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the

collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9007 or any amounts paid to secure a surety bond under 11 CFR 9007.5(c).

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates who withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. The statement shall contain the information required under 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d) (1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term *other assets* means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(2).

(e) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(f) *Review of candidate statement*—(1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR part 9007.

(2) *Candidate eligible for post-election funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial determination.* In making a determination under 11 CFR 9004.9(f)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds committee assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in accordance with 11 CFR 9007.5(a).

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, title 2, United States Code, and 11 CFR parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments

received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale after end of expenditure report period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9005--CERTIFICATION BY COMMISSION

Sec.

Authority: 26 U.S.C. 9005, 9006 and 9009(b).

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility tb receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of minor and new party candidates for post-election payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.2 Payments to eligible candidates from the Fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in

accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.
9006.1 Separate reports.
9006.2 Filing dates.

Authority: 2 U.S.C. 434 and 26 U.S.C. 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.
9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.
9007.5 Petitions for rehearing; stays of repayment determinations.
9007.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9003.6, the Commission will give the candidate's authorized committee at least two weeks, notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9003.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9003.6(b), the Commission will give the candidate's authorized committee at least two weeks, notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 2 U.S.C. 437d(a)(1) or a subpoena or subpoena duces tecum pursuant to 2 U.S.C. 437d(a)(3). The procedures set forth in 11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR part 111, those matters will not be contained in the publicly released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under

11 CFR part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period. The Commission's issuance of an interim audit report to the candidate under 11 CFR 9007.1(c) will constitute notification for purposes of the 3-year period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses.* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year. For purposes of this section, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on investment of payments from the Fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful acceptance of contributions by an eligible candidate of a major party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or

representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.2.

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination or a final determination that a candidate is not entitled to all or a portion of post election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section,

as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9007.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

14. 11 CFR part 9012 is revised to read as follows:

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

Authority: 26 U.S.C. 9012. 12.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the Fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR parts 9001-9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant

to a certification by the Commission or any examination and audit by the Commission under 11 CFR parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

15. 11 CFR parts 9031 through 9039 is revised to read as follows:

PART 9031—SCOPE

Sec.
9031.1 Scope.

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR part 100 through 116). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 116).

PART 9032—DEFINITIONS

Sec.
9032.1 Authorized committee.
9032.2 Candidate.
9032.3 Commission.
9032.4 Contribution.
9032.5 Matching payment account.
9032.6 Matching payment period.
9032.7 Primary election.
9032.8 Political committee.
9032.9 Qualified campaign expenses.
9032.10 Secretary.
9032.11 State.

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, *authorized committee* means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term *authorized committee* includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) For the purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

(d) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 9032.2 Candidate.

Candidate means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or run-off election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 calendar days after receipt of notification.

§ 9032.3 Commission.

Commission means the Federal Election Commission, 999 E Street NW., Washington, DC 20463.

§ 9032.4 Contribution.

For purposes of this subchapter, *contribution* has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 9032.5 Matching payment account.

Matching payment account means the Presidential Primary Matching Payment Account established by the Secretary of the Treasury under 26 U.S.C. 9037(a).

§ 9032.6 Matching payment period.

Matching payment period means the period beginning January 1 of the calendar year in which a Presidential general election is held and may not exceed one of the following dates:

(a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate.

(b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

§ 9032.7 Primary election.

(a) *Primary election* means an election held by a State or a political party, including a run-off election, or a nominating convention or a caucus—

(1) For the selection of delegates to a national nominating convention of a political party;

(2) For the expression of a preference for the nomination of Presidential candidates;

(3) For the purposes stated in both paragraphs (a) (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for the purposes of this subchapter will be the election held by the political party.

§ 9032.8 Political committee.

Political committee means any committee, club, association, organization or other group of persons (whether or not incorporated) which

accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

§ 9032.9 Qualified campaign expense.

(a) *Qualified campaign expense* means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under 11 CFR 9033.5;

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any law of any State in which the expense is incurred or paid, or of any regulation prescribed under such law of the United States or of any State, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, will not be considered a State law for purposes of this subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, *Secretary* means the Secretary of the Treasury.

§ 9032.11 State.

State means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

Sec.

Authority: 26 U.S.C. 9033 and 9039(b)

§ 9033.1 Candidate and committee agreements.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the letter containing the agreements required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(6) The candidate and the candidate's authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(7) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR parts 9038 and 9039.

(8) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the

information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the Committee treasurer.

(9) The candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(10) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.*; 26 U.S.C. 9031 *et seq.* and the Commission's regulations at 11 CFR parts 100–116, and 9031–9039.

(11) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in 11 CFR 9033.2(b) to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) The candidate shall certify that he or she is seeking nomination by a political party to the Office of President in more than one State. For purposes of this section, in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office. For purposes of this section, the term "political party" means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(2) The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR part 9035.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totaling more than $5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of $250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the $5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR 9033.2(b)(3) to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after service of the Commission's notice, written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(c) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

(a) The Commission will examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

(1) Make a determination that the candidate has satisfied the minimum contribution threshold requirements under 11 CFR 9033.2(c); or

(2) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after service of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(b) In evaluating the candidate's submission under 11 CFR 9033.1 and 9033.2, the Commission may consider other information in its possession, including but not limited to past actions of the candidate in an earlier publicly-financed campaign, that is relevant to a determination regarding the candidate's eligibility for matching funds.

(c) The Commission will make its examination and determination under this section as soon as practicable. During the Presidential election year, the Commission will generally complete its review and make its determination within 15 business days.

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5 (a), (b), or (c) occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has net outstanding campaign obligations as defined in 11 CFR 9034.5.

(a) *Inactive candidate.* The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earliest of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or she is not actively conducting campaigns in more than one State; or

(3) The date which the Commission determines under 11 CFR 9033.6 to be the date that the candidate is not actively seeking election in more than one State.

(b) *Insufficient votes.* The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes the candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

(3) If the candidate certifies that he or she will not be an active candidate in a particular primary, and the Commission accepts the candidate's certification, the primary involved shall not be counted in determining the candidate's date of ineligibility under paragraph (b) of this section, regardless of the percentage of popular votes cast for the candidate in that primary.

(c) *End of matching payment period.* The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

(d) *Reestablishment of eligibility.* If the Commission has determined that a candidate is ineligible under 11 CFR 9033.5 (a) or (b), the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, make a determination that a candidate is no longer actively seeking nomination for election in more than one State. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5.

(b) *Factors considered.* In making its determination of inactive candidacy, the Commission may consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers;

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days after service of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b) or, if the timing of the activity does not permit notice during the 10 day period, as soon as practicable following campaign activity by the candidate in the primary state. The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days after service of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates found to be inactive.* A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one State may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates receiving insufficient votes.* A candidate determined to be ineligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

(c) The Commission will make its determination under 11 CFR 9033.8 (a) or (b) without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility. Any expenses incurred during the period of ineligibility that would have been considered qualified campaign expenses if the candidate had

been eligible during that time may be defrayed with matching payments.

§ 9033.9 Failure to comply with disclosure requirements or expenditure limitations.

(a) If the Commission receives information indicating that a candidate or his or her authorized committee(s) has knowingly and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR part 104, or that a candidate has knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days after service of the Commission's notice, to comply with the above cited provisions or to submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) (1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements, as provided in 11 CFR 9033.4;

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7;

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9; or

(6) The Commission receives information indicating that substantial assets of the candidate's authorized committee have been undervalued or not included in the candidate's statement of net outstanding campaign obligations or that the amount of outstanding campaign obligations has been otherwise overstated in relation to committee assets, as provided in 11 CFR 9034.5(g).

(b) *Initial determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in 11 CFR 9033.10(a), the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in 11 CFR 9033.10(a), written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR part 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

(e) *Petitions for rehearing.* Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9033.11(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement, or

(ii) If such a receipt is not available, a canceled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9033.11(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9033.11(b)(1)(i) nor the supporting documentation specified in 11 CFR 9033.11(b)(1)(ii) is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9033.11(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such

collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a daily travel expense policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and or/subsistence and if he or she is the recipient of the goods or services purchased.

(ii) *Purpose* means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets—*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

§ 9033.12 Production of computerized information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Records of allocations of expenditures to particular state expenditure limits and to the overall expenditure limit;

(3) Disbursements for exempt fundraising and exempt compliance costs, including the allocation of salaries and overhead expenditures;

(4) Records of allocations of expenditures for the purchase of broadcast media;

(5) Records used to prepare statements of net outstanding campaign obligations;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding campaign obligations.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall provide documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9034—ENTITLEMENTS

Sec.

Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the

date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(d) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR part 9035.

§ 9034.2 Matchable contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution shall be a gift of money made: By an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of $250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must be dated, physically received and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if such donations meet the requirements of this section.

(b) For purposes of this section, the term *written instrument* means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: Payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(1) In cases of a check drawn on a joint checking account, the contributor is considered to be the owner whose signature appears on the check.

(i) To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall also indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(iii) In the case of a contribution reattributed to a joint tenant of the account, the reattribution shall comply with the requirements of 11 CFR 110.1(k) and the documentation described in 11 CFR 110.1 (1), (3), (5) and (6) shall accompany the reattributed contribution.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

(3) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as:

(i) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity; and

(ii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed $1,000 to any one Presidential candidate seeking nomination.

(4) Contributions in the form of money orders, cashier's checks, or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, traveler's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check, traveler's check, or other similar negotiable instrument, the check or serial number, and the name of the issuer of the negotiable instrument; and

(iii) Such statement is signed by each contributor.

(5) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An "essentially political" activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

§ 9034.3 Non-matchable contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include, for example:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for or other otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election;

(j) Contributions of currency of the United States or currency of any foreign country; and

(k) Contributions redesignated for a different election or redesignated for a legal and accounting compliance fund pursuant to 11 CFR 9003.3.

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses*—(1) *General.* Except as provided in 11 CFR 9034.4(b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding down costs and continuing to campaign.* (i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under paragraph (a)(3)(i) of this section. Contributions received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR Part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(6) *Payments to other authorized committees.* Payments, including transfers and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(7) *Allocable expenses.* Payments for expenses subject to state allocation under 11 CFR 106.2 are not qualified campaign expenses if the records retained are not sufficient to permit allocation to any state, such as the failure to keep records of the date on which the expense is incurred.

(c) *Repayments.* Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2(a)), contributions and matching payments in the committee's account(s),

and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

(d) *Transfers to other campaigns*—(1) *Other Federal offices.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.3(c)(5).

(2) *General election.* If a candidate has received matching funds, all transfers from the candidate's primary election account to a legal and accounting compliance fund established for the general election must be made in accordance with 11 CFR 9003.3(a)(1) (ii) and (iii).

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks; savings and loan institutions; and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5(c).

(c) (1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term *other assets* means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d)(2).

(d) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

(e) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under 11 CFR 9034.5(e)(2)(i), the amount actually received.

(f) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the committee as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(g) (1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under 11 CFR 9034.5(g)(1), the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its initial determination within 15 business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 15 business days after service of the Commission's notice,

the candidate may submit written legal or factual materials to demonstrate that he or she has met outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds committee assets, he or she may continue to receive matching payments.

(4) Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses and, except for costs relating to Secret Service personnel or national security staff, subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint fundraising.

(a) *General.*—(1) *Permissible participants.* Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of funds.* Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner consistent with 11 CFR 113.2, including repayment of funds under 11 CFR part 9038.

(b) *Fundraising representatives.*—(1) *Establishment or selection of fundraising representative.* The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate. If the participants estabish a separate committee to act as the fundraising representative, the separate committee shall not be a participant in any other joint fundraising effort, but the separate committee may conduct more than one joint fundraising effort for the participants.

(2) *Separate fundraising committee as fundraising representative.* A separate fundraising committee established by the participants to act as fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating committee as fundraising representative.* A participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent fundraising agent.* The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint fundraising procedures.* Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agteement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 9034.8(c)(2)(ii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2), part 110, and 9034.4(b)(6).

(3) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under title 2, United States Code. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds

to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Each contribution received shall be allocated among the participants in accordance with the allocation formula, unless the circumstances described in paragraphs (c)(7) (ii), (iii) or (iv) of this section apply. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(b), the fundraising representative may reallocate the surplus funds. The fundraising representative shall not reallocate funds so as to allow candidates seeking to extinguish outstanding debts to rely on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participant's proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative without the prior written permission of the contributor. A written instrument made payable to one of the participants shall be considered an earmarked contribution unless a written statement by the contributor indicates that it is intended for inclusion in the general proceeds of the fundraising activity.

(8) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR part 110. See also 11 CFR 9034.4(b)(6).

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of receipts and disbursements.*— (i) *Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made. Each participant shall report in a memo Schedule B his or her total allocated share of these disbursements in the same reporting period in which net proceeds are distributed and reported and include the amount on page 4 of Form 3–P, under "Expenditures Subject to Limit."

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes (See 11 CFR 9034.5(c)(2)), subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

(b) *Sale after end of matching payment period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is

an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

Sec.
9035.1 Campaign expenditure limitation.
9035.2 Limitation on expenditures from personal or family funds.

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 Campaign expenditure limitation.

(a)(1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c)(1) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 an amount equal to 10% of all salaries and overhead expenditures as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies, and telephone base service charges as set forth at 11 CFR 106.2(b)(2)(iii)(A).

(i) If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance exemption.

(ii) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR ch. I, including the costs of preparing matching fund submissions and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching fund submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(2) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 the amount of exempt fundraising costs specified in 11 CFR 100.8(b)(21)(iii).

(d) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

§ 9035.2 Limitation on expenditures from personal or family funds.

(a)(1) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed $50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR part 110. The provisions of this section also shall not limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9038. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(2) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the *closing date* shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(b) For purposes of this section, the term *immediate family* means a candidate, spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, *personal funds* has the same meaning as specified in 11 CFR 110.10.

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.
9036.1 Threshold submission.
9036.2 Additional submissions for matching fund payments.
9036.3 Submission of errors and insufficient documentation.
9036.4 Commission review of submissions.
9036.5 Resubmissions.
9036.6 Continuation of certification.

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 Threshold submission.

(a) *Time for submission of threshold submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in 11 CFR 9036.1(b). The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications required by 11 CFR 9033.1 and 9033.2.

(b) *Format for threshold submission.* (1) For each State in which the

candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) For each list of contributors generated directly or indirectly from computerized files or computerized records, the candidate shall submit computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the information required by 11 CFR 9036.1(b)(1) in accordance with 11 CFR 9033.12.

(3) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(4) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(5) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(6) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, in alphabetical order by contributor, of all contributions that were refunded to the contributor, regardless of whether the contributions were submitted for matching. For each refunded contribution, the listing shall state the contributor's full name and address, the deposit date and batch number, an indication of which matching fund submission the contribution was included in, if any, and the amount and date of the refund. The listing shall be accompanied by a full-sized photocopy of each refunded contributor check.

(7) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(8) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold certification by Commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR part 9034.

(2) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the candidate is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted

after the candidate's date of ineligibility. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions received up to the last business day preceding the date of the request. On the next submission date as designated for that committee after a letter request has been made, the committee shall submit the documentation required under 11 CFR 9036.2(b)(1) for all contributions included in the letter request, as well as any contributions submitted for matching in that full submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by the Commission as a letter request date for that committee.

(c) *Certification of additional payments by Commission.* (1)(i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 20 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary, within 20 business days after receipt of a submission by the candidate under 11 CFR 9036.2(a), an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission of errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount or date of the contribution, or the listing of the committee or candidate as payee.

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

(1) The listed amount requested for matching exceeds the amount contained on the written instrument;

(2) A written instrument has not been submitted to support a listed contribution;

(3) The submitted written instrument cannot be associated either by accountholder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

(c) Discrepancies within or between contributor lists submitted, such as:

(1) The address of the contributor is omitted or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than $250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* The Commission will make an initial review of each submission made under 11 CFR part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three-day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission

certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as non-matchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for presentation of resubmissions.* If the candidate chooses to resubmit any contributions under 11 CFR 9036.5(a), the contributions shall be resubmitted on dates to be determined and published by the Commission. The candidate may not make any resubmissions later than the first Tuesday in September of the year following the Presidential election year.

(c) *Format for resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contributions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Initial determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still non-matchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after service of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The Commission will notify each candidate of the last date on which contributions may be submitted for the first time for matching in the year following the election. The last date for first-time submissions will be either the last Monday in February or the second Monday in March of the year following the election, depending on the submission schedule the Commission has designated for the candidate. No contribution will be matched if it is submitted after the last submission date designated for that candidate, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS AND REPORTING

Sec.

Authority: 26 U.S.C. 9037 and 9039(b).

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate.

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate. The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

PART 9038—EXAMINATION AND AUDITS

Sec.
9038.1 Audit.
9038.2 Repayments.
9038.3 Liquidation of obligations; repayment.
9038.4 Extensions of time.
9038.5 Petitions for rehearing; stays of repayment determinations.
9038.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9038.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.12, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.12, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9033.12(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding campaign obligations, or updating the amount chargeable to a state expenditure limit. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee and that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such Personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement, within 10 calendar days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 2 U.S.C. 437d(a)(1) or a subpoena or subpoena duces tecum pursuant to 2 U.S.C. 437(d)(a)(3). The procedures set forth in 11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be

discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9038.1(b) (1) and (2) shall apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Primary Matching Payment Account Act and Commission regulations;

(ii) Eligibility of the candidate to receive primary matching payments;

(iii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

(v) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 calendar days after service of the interim report legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9038.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9038.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9038.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9038.1 and part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the end of the matching payment period. The Commission's issuance of an interim audit report to the candidate under 11 CFR 9038.1(c) will constitute notification for purposes of the 3 year period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive

payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures as set forth in the Federal Election Commission's Guideline for Presentation in Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable;

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.6 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5; and

(v) Payments or portions of payments made to the candidate on the basis of the debts reflected in the candidate's statement of net outstanding campaign obligations, which debts are later settled for an amount less than that stated in the statement of net outstanding campaign obligations.

(2) *Use of funds for non-qualified campaign expenses.* (i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in paragraphs (b)(2)(i) (A)–(C) of this section:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9038.2(b)(2) include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR part 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law;

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties; and

(D) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for costs associated with continuing to campaign after the candidate's date of ineligibility.

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total deposits, as of the candidate's date of ineligibility. Total deposits is defined in accordance with 11 CFR 9038.3(c)(2). For the purpose of seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis.

(iv) Repayment determinations under 11 CFR 9038.2(b)(2) will include all non-qualified campaign expenses paid before the point when committee accounts no longer contain matching funds, including non-qualified campaign expenses listed on the candidate's statement of net outstanding campaign obligations that may result in a separate repayment determination under 11 CFR 9038.2(b)(1).

(v) If a candidate or a candidate's authorized committee(s) exceeds both the overall expenditure limitation and one or more State expenditure limitations, as set forth at 11 CFR 9035.1(a), the repayment determination under 11 CFR 9038.2(b)(2)(ii)(A) shall be based on only the larger of either the amount exceeding the State expenditure limitation(s) or the amount exceeding the overall expenditure limitation.

(3) *Failure to provide adequate documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from the investment of surplus public funds after the candidate's date of ineligibility, less Federal, State and local taxes paid on such income, is also repayable.

(c) *Repayment determination procedures.* Commission repayment determinations will be made in accordance with the procedures set forth at 11 CFR 9038.2(c) (1) through (4) of this section.

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30-day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9038.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9038.2(c)(2). The candidate or representative will also have the opportunity to answer any questions

from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9038.2(c)(2) and any oral presentation made under 11 CFR 9038.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days after service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9038.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9038.2(f).

(h) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus, the candidate shall within 30 calendar days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this subsection, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9038 the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9038.

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's final repayment determination under 11 CFR 9038.2(c)(4), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment of

the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section, or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9038.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.

Authority: 26 U.S.C. 9039.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR part 9036.

§ 9039.3 Examination and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in

the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order; 1

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–17610 Filed 7–26–91; 8:45 am]

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Monday
July 29, 1991

Part III

Department of Health and Human Services

Office of Inspector General

42 CFR Part 1001

Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991-AA49

Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 14 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, by specifying various payment practices which, although potentially capable of inducing referrals of business under Medicare or a State health care program, will be protected from criminal prosecution or civil sanctions under the anti-kickback provisions of the statute.

EFFECTIVE DATE: This regulation is effective on July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Thomas S. Crane or D. McCarty Thornton, Office of the General Counsel, (202) 619–0335.

Joel Schaer, Office of Inspector General, (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Medicare Anti-Kickback Statute

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)), previously codified at sections 1877 and 1909 of the Act, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

Since the statute on its face is so broad, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

B. Public Law 100–93

Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude an individual or entity from participation in the Medicare and State health care programs if it is determined that the party has engaged in a prohibited remuneration scheme. (Section 1128(b)(7) of the Act, 42 U.S.C. 1320a–7(b)(7)) This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Public Law 100–93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7) of the Act.

C. Notice of Intent

The legislative history of section 14 of Public Law 100–93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 19, 1987) soliciting comments from interested parties prior to developing a proposed regulation. As a result of that notice, the OIG received a number of public comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

D. Notice of Proposed Rulemaking

The proposed regulation designed to implement section 14 of Public Law 100–93 was developed by the OIG and published in the **Federal Register** on January 23, 1989 (54 FR 8033). The regulation sets forth various proposed business and payment practices, or "safe harbors," that would not be treated as criminal offenses under section 1128B(b) of the Act and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act. As a result of that proposed rulemaking, we received a total of 754 public comments for consideration.

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

The proposed regulation indicated that in order for a business arrangement to comply with one of the ten safe harbors, each standard of that safe harbor provision would have to be met. The proposed rule stated that if the business arrangement involves payments for different purposes (for example a single payment for personal services and for equipment rental) then each payment purpose would be analyzed to determine if all the standards of each applicable safe harbor provision have been fulfilled. The proposed rule further specified that where individuals and entities have entered into arrangements that are covered by the statute and where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil or criminal enforcement action.

B. Need for Continuing Guidance

Since there may be a need for the Department to respond to changes in health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy, the proposed rule invited public comment on how we can best achieve the dual goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments.

C. Notice to Beneficiaries

While we considered including in several of the proposed safe harbor provisions a requirement that a person notify each Medicare or Medicaid patient he or she refers to a related entity of the financial relationship that exists, we indicated that such notice requirements may be unduly burdensome compared with the potential benefits and, therefore, did not include the requirement in the safe harbors in the proposed regulation. Instead, we invited public comments on this issue.

D. Preferred Provider Organizations

We cited the increasing variety of arrangements among entities grouped under the generic headings "preferred

provider organizations" (PPOs) or "managed care," and that unlike HMOs, there is often no single entity that is recognized as the "health care provider." The proposed regulations did not specifically delineate a safe harbor provision for these arrangements since we believed that one or more of the other proposed safe harbors would often cover relationships in preferred provider and managed care networks. We invited comments from the public, however, on the idea of adding additional safe harbors that would provide further protection to HMOs, PPOs, and other managed care plans.

E. Waiver of Coinsurance and Deductible Amounts for Inpatient Hospital Care

We noted that with the advent in 1983 of the prospective payment system for paying hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. We solicited comments on defining a safe harbor for waiving coinsurance and deductible amounts that would be limited to inpatient hospital care, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the coinsurance and deductible amounts would not be passed on to any Federal program as a bad debt or in any other way.

F. Proposed Safe Harbors

The regulation published on January 23, 1989, proposing to amend 42 CFR part 1001 by adding a new § 1001.952, set forth "safe harbors" in ten broad areas:

1. Investment Interests

To reflect the view that Congress did not intend to bar all investments by physicians in other health care entities to which they refer patients, a safe harbor provision was proposed for investment interests in large public corporations where such investments are available to the general public. This safe harbor described a minimum number of shareholders and a minimum number of assets the company must have in order to qualify under this provision.

Safe harbors for limited and managing partnerships were considered under the proposed regulation, but were not included. These areas were discussed in the preamble of the proposed rule, and we specifically requested public comments on adopting these practices as safe harbors.

2. Space Rental

While many rental arrangements are legitimate, many situations exist where rental payments are simply a device used to mask illegal payments intended to induce referrals. Accordingly, a safe harbor provision was proposed for rental arrangements if: (a) Access to the space is for periodic intervals and such intervals are set in advance in the lease, rather than based on the number of referred patients; (b) the lease is for at least one year so it cannot be readjusted on too frequent a basis to reflect prior referrals; and (c) the charges reflect fair market value.

3. Equipment Rental

With the understanding that the payment for the use of diagnostic and other medical equipment may simply be a vehicle to provide reimbursement for referrals, a safe harbor was proposed for certain situations involving equipment rentals similar to those applied to real estate rentals cited above.

4. Personal Services and Management Contracts

While health care providers often have arrangements to perform services for each other on a mutually beneficial basis, some of these arrangements may vary the payment with the volume of referrals. The proposed regulation set forth a safe harbor provision for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met that limit the opportunity to provide financial incentives in exchange for referrals. This proposed provision required the services to be paid at fair market value, and was predicated on requirements similar to those set forth in the provisions for space and equipment rental.

5. Sale of Practice

Unlike the traditional sale of a practice by a retiring physician, a physician may sell, or appear to sell, a practice to a hospital while continuing to practice on its staff. A safe harbor provision was proposed for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

6. Referral Services

Professional societies and other consumer-oriented groups often operate referral services for a fee. Because such a service fee could be construed as a payment in order to obtain a referral, we concluded that it was appropriate to establish a specific safe harbor for this type of practice. In order to safeguard against abuse, however, the provision is only available when several standards are met.

7. Warranties

It is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. A safe harbor was proposed for such purposes.

8. Discounts

Safe harbors relating to discounts, employees and group purchasing organizations are specifically required by statute. The discount exception was intended to encourage price competition that benefits the Medicare and Medicaid programs. The proposed discount provision was limited in application to reductions in the amount a seller charges for a good or service to the buyer. The discount could take the form of a specified price break, or the inclusion of an extra quantity of the item purchased "at no extra charge." We did not propose to protect many kinds of marketing incentive programs such as cash rebates, free goods or services, redeemable coupons, or credits.

9. Employees

The proposed exception for employees permitted an employer to pay an employee in whatever manner he or she chose for having that employee assist in the solicitation of program business and applied only to bona fide employee-employer relationships.

10. Group Purchasing Organizations

The proposed group purchasing organization (GPO) exception was designed to apply to payments from vendors to entities authorized to act as a GPO for individuals or entities who are furnishing Medicare or Medicaid services. The proposed exception required a written agreement between the GPO and the individual or entity that specifies the amounts vendors will pay the GPO.

III. Response to Comments and Summary of Revisions

As indicated above, in response to the proposed rulemaking we received 754 public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private

practitioners and concerned citizens. The comments included both general and broadreaching concerns regarding the impact of this regulation, and specific comments on those areas and safe harbor provisions about which we requested public input. A summary of the comments received and our responses to those comments follows.

A. Genera1 Comments

Comment: A large number of commenters expressed concern about the implication of engaging in a business arrangement that does not comply fully with a provision of this regulation. Some of these commenters expressed the view that the safe harbor provisions are narrowly drawn and leave many lawful business arrangements unprotected. Moreover, the preamble to the proposed rule warns: "[W]here individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to comply fully with one of the exemptions in these regulations, they would risk scrutiny by the OIG * * *." These commenters urged the OIG to make clear that the failure to comply fully with a safe harbor provision is not *per se* illegal, and does not mean that prosecution will automatically follow. In addition, they requested safe harbor protection for business arrangements where there has only been a "technical violation" of the statute, where there has been "substantial compliance" with this regulation, or where the remuneration in question is "de minimis."

Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

This regulation does not expand the scope of activities that the statute prohibits. The statute itself describes the scope of illegal activities. The legality of a particular business arrangement must be determined by comparing the particular facts to the proscriptions of the statute.

The failure to comply with a safe harbor can mean one of three things. First, as we stated in the preamble to the proposed rule, it may mean that the arrangement does not fall within the ambit of the statute. In other words, the arrangement is not intended to induce the referral of business reimbursable under Medicare or Medicaid; so there is no reason to comply with the safe harbor standards, and no risk of prosecution.

Second, at the other end of the spectrum, the arrangement could be a clear statutory violation and also not qualify for safe harbor protection. In that case, assuming the arrangement is obviously abusive, prosecution would be very likely.

Third, the arrangement may violate the statute in a less serious manner, although not be in compliance with a safe harbor provision. Here there is no way to predict the degree of risk. Rather, the degree of the risk depends on an evaluation of the many factors which are part of the decision-making process regarding case selection for investigation and prosecution. Certainly, in many (but not necessarily all) instances, prosecutorial discretion would be exercised not to pursue cases where the participants appear to have acted in a genuine good-faith attempt to comply with the terms of a safe harbor, but for reasons beyond their control are not in compliance with the terms of that safe harbor. In other instances, there may not even be an applicable safe harbor, but the arrangement may appear innocuous. But in other instances, we will want to take appropriate action.

We do not believe the Medicare and Medicaid programs would be properly served if we assured protection in all instances of "substantial compliance," "technical violations," or "de minimis" payments. Unfortunately, these are vague concepts, subject to differing interpretations. In this requlation, we have attempted to provide bright lines, to the extent possible, for safe harbors in order to provide clarity and predictability as to what conduct is immune from government action. Our endorsement of the concepts mentioned above would only serve to blur these lines and produce litigation as to what "substantial," "technical" and "de minimis" really mean. The OIG therefore declines to adopt these concepts.

A recent decision of the United States Court of Appeals for the First Circuit provides an indication of the litigation problems that could arise if "substantial compliance" with a safe harbor provision was all that was required. *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc.*, 874 F.2d 20 (1st Cir., 1989) involved an arrangement between an employee of a city owned hospital (Felci) and an ambulance company (Bay State). Felci was involved in the administration of the city's ambulance service contract. During this period, Bay State retained Felci as a consultant, provided him with two automobiles, and paid Felci's consulting company several thousand dollars. When it came time for renewal of the ambulance contract, Felci used his position and influence at the city hospital to assist Bay State in securing the new contract. Felci was prosecuted and convicted under the statute.

In affirming Felci's conviction (as well as that of Bay State's president, Kotzen), the First Circuit rejected Felci's contention that he had substantially complied with this regulation as published as a notice of proposed rulemaking, and thus should not be prosecuted. The court found: "The proposed regulation does not exempt every transaction in which the amount paid for services is an amount consistent with fair market value; rather it exempts only a small subset of such transactions * * *. [U]nder the circumstances such as the present case where the consulting arrangement is not full-time, * * * stringent requirements are necessary to meet the exemption from criminal liability. HHS has thus decided *not* to create a safe harbor for transactions such as the present case." (Emphasis in original; footnote omitted) *Id.* 874 F.2d at 31.

Comment: Several commenters described business arrangements that technically may violate the statute, but do not increase costs to the Medicare or Medicaid programs, or otherwise injure beneficiaries. They requested safe harbor protection for these arrangements because of concern of their risk of being scrutinized.

Response: Increased cost to the Medicare and Medicaid programs and harm to beneficiaries are not the only criteria we look at in determining whether a particular business arrangement is abusive. As the court in *United States* v. *Ruttenberg*, 625 F.2d 173, 177, n.9 (7th Cir. 1980) noted:

> [T]he law does not make increased cost to the government the sole criterion of corruption. In prohibiting "kickbacks," Congress need not have spelled out the obvious truisms that, while unnecessary expenditure of money earned and contributed by taxpaying fellow citizens may exacerbate the result of the crime, kickback schemes can freeze competing suppliers from the system, can mask the possibility of government price reductions, can misdirect program funds, and, when proportional, can erect strong temptations to order more drugs and supplies than needed.

Furthermore, it is unfortunately not possible to provide safe harbor protections for all business arrangements that are not abusive. There are certain arrangements that, although themselves legitimate, are

structurally so similar to abusive arrangements that protection by way of new safe harbor provisions will inevitably also protect abusive practices as well. For example, equipment rental arrangements made between parties in a position to make and accept referrals do not receive safe harbor protection if the payments are based on utilization (sometimes known as a "wear and tear" clause). We recognize that equipment becomes less valuable the more it is used, and that its owner deserves compensation for such wear and tear. However, it is also a relatively easy matter to disguise such a wear and tear payment as a payment for referrals. Thus, we need to examine the intent of the parties on a case-by-case basis even though a large majority of such payments may represent only legitimate compensation to the owner of the equipment.

The recent case, *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc.*, discussed above, emphasizes that the gravamen of a violation of the statute is "inducement" and not necessarily the structure of the arrangement. *Id.* 874 F.2d at 29. Thus, such case by case inquiries must necessarily focus on the intent of the parties.

The *Bay State Ambulance* case also illustrates the risk health care providers engage in when they enter into a business arrangement that violates the statute, but try to argue that the arrangement does not increase program costs or result in overutilization. The First Circuit rejected the defendants' arguments that there would have been no fiscal drain on public programs because ambulance services and Medicare reimbursement would have been required no matter which ambulance service company had received the contract. The court noted that it was unclear whether Medicare paid Bay State more for these services than it would have paid to the losing bidder even though that bidder's charges were lower. The court observed: "Although the reason for enacting the statute was to prevent drains on the public fisc, the statute does not require that there be a drain on the public fisc in order for payments to be illegal." *Id.* n.21, 874 F.2d at 32.

Comment: Numerous commenters expressed concern about the difficulty in revising a business arrangement that they entered into with a good-faith belief that the arrangement did not violate the statute, but which they now find does not qualify under one of the safe harbor provisions. They suggested that the OIG either "grandfather" these arrangements or provide a reasonable period of time before initiating enforcement action to enable health care providers to restructure their arrangements to meet the safe harbor provisions.

Response: The failure of a particular business arrangement to comply with these provisions does not determine whether or not the arrangement violates the statute because, as we stated above, this regulation does not make conduct illegal. Any conduct that could be construed to be illegal after the promulgation of this rule would have been illegal at any time since the current law was enacted in 1977. Thus illegal arrangements entered into in the past were undertaken with a risk of prosecution. This regulation is intended to provide a formula for avoiding risk in the future.

We also recognize, however, that many health care providers have structured their business arrangements based on the advice of an attorney and in good-faith believed that the arrangement was legal. In the event that they now find that the arrangement does not comply fully with a particular safe harbor provision and are working with diligence and good faith to restructure it so that it does comply, we will use our discretion to be fair to the parties to such arrangements.

Nonetheless, we believe that it would be inappropriate for us to provide a blanket protection, even for a limited period of time, for all business arrangements that do not qualify for a safe harbor. As we stated above, certain business arrangements that do not qualify may warrant immediate enforcement action.

Comment: Many commenters discussed the interrelationships between these safe harbor provisions and reimbursement rules promulgated by the Health Care Financing Administration (HCFA). A few of these commenters appeared to suggest that if a health care provider complied with a particular safe harbor provision, then its reimbursement may be affected.

Response: We wish to emphasize that nothing in this regulation changes reimbursement rules promulgated by HCFA or a State health care program. Clearly if a provider chooses to engage in one course of conduct in order to comply with these safe harbor provisions, such action may very well have reimbursement implications. However, such reimbursement is governed exclusively by HCFA or State regulations, and not by this regulation.

Comment: Several commenters requested that the OIG publish this regulation with an additional comment period because of the complexity of the issues involved and the revisions or additions of new safe harbor provisions created as a result of the comments.

Response: We believe that the disadvantages of providing an additional comment period outweigh the benefits. As we stated above, we received extensive comments in response to this proposed rule. In addition, due to the novelty and complexity of these issues, we started this process with a special notice of intent to develop regulations, (52 FR 38794, October 19, 1987) and received over 150 comments, which we used to develop the proposed rule.

Also weighing against any benefit of receiving additional comments on this rule is the desirability of providing the level of certainty that accompanies a final rule. This will permit individuals and entities to structure business arrangements under the provisions of this rule with the assurance that it will not change in the near future. Such assurance is delayed somewhat by providing an additional comment period.

We acknowledge the congressional expectation that we should "formally re-evaluate the anti-kickback regulations on a periodic basis, and, in so doing, * * * solicit public comment at the outset of the review process." H.R. Rep. No. 85, part 2, 100th Cong. 1st Sess. 27 (1987). We believe it is most appropriate to allow all parties time to obtain experience with these safe harbor provisions in their final form before we solicit additional public comments to start our formal re-evaluation process.

Nonetheless, we received many comments requesting safe harbor protection for a number of business arrangements, many of which deserve safe harbor protection. As discussed in more detail below in section III.B.3. of this preamble, the comments we received on HMOs, PPOs, and other managed care plans warrant the creation of two new safe harbor provisions. Because of the lack of specificity in those comments, we expect to publish these provisions as a separate interim final regulation at a later date. While this provision will be effective upon publication, the public will have an opportunity to submit their specific comments and concerns regarding this new safe harbor.

In addition, as discussed in more detail below in section III.B. of this preamble, many other arrangements brought to our attention were for arrangements on which we did not solicit comments. Because some of these arrangements may deserve safe harbor

protection, we anticipate publishing additional safe harbor provisions in a separate notice of proposed rulemaking. Any discussion below indicating that we are considering a new safe harbor provision should in no way be construed as legalizing the business arrangement at this time.

Comment: Numerous commenters suggested that the OIG should employ a cease and desist mechanism. Some suggested that the OIG should be required to employ such a mechanism before it initiates a criminal prosecution or program exclusion. Others supported the use of this mechanism because they believed that many business arrangements that violate the statute do not warrant prosecution but should be stopped.

Response: We do not have the authority to seek or issue a legally enforceable order directing a person to cease and desist from a particular unlawful kickback activity. We recognize that there may be situations where it may be appropriate to inform a person that he or she is violating the statute, and request that the unlawful activity be stopped. Where the person takes immediate action to conform his activity to the law, we may decide that no further action is warranted. However, there may be other situations where criminal prosecution is appropriate even though the person has stopped the illegal activity. Since we lack the power to issue or seek a legally enforceable cease and desist order, we cannot rely on that mechanism as a significant enforcement tool.

Comment: Three commenters suggested that because many business arrangements will not meet the safe harbor provisions, the regulation was of limited value. They suggested that health care providers would be better aided if the OIG would provide examples of arrangements that violate the statute.

Response: As we stated above, the purpose of this regulation is not to describe illegal conduct, but rather to set forth standards for certain safe harbors. If an individual or entity engages in a business arrangement that is the subject of a safe harbor provision and complies with all of its provisions, that individual will be assured that he or she will not be prosecuted. However, we recognize the desirability of communicating to the public the existence of other business practices and arrangements that we believe are subject to serious abuse. Accordingly, we issued a special OIG Fraud Alert on joint venture arrangements that described various suspect features of these business ventures that may result in a violation of the statute. As the need arises, we intend to issue other fraud alerts that will provide guidance to the public on other types of arrangements.

Comment: In seeking guidance with respect to transactions or practices not covered by any specific safe harbor provision, many commenters requested the OIG to include within this regulation a list of generic criteria it would consider in evaluating business arrangements under the statute. These commenters cite a variety of positive and negative factors as relevant generic criteria, including on the positive side whether the arrangement has "a legitimate business purpose" or promotes the delivery of needed services, particularly to indigent, elderly, or rural populations; and on the negative side whether the arrangement promotes overutilization, interferes with patient freedom of choice, diminishes the quality of care provided, or increases costs to beneficiaries or to the government. Some commenters pointed out that the legislative history of Public Law 100–93 directs the Department to include in the rules "any generic criteria that might apply to business arrangements generally." H.R. Rep. No. 85, part 2, 100th Cong., 1st Sess. 27 (1987).

Response: We believe the same generic criteria applicable to all business arrangements would not provide useful guidance to the extent that they are based on value judgments regarding the relative advantages (e.g., lower cost or improved accessibility) and disadvantages (e.g., higher cost or overutilization) of the arrangement. It would be virtually impossible to set forth rules describing how we intend to apply them. For example, the determination of whether a joint venture has a legitimate business purpose, is a matter of subjective judgment, and we believe the use of such criteria would invite litigation because health care providers will not be sure if they are complying with them.

An example of the problems in using these types of generic criteria can be seen if we attempted to provide safe harbor protection for business arrangements that have a "legitimate business purpose." The statute proscribes the giving of rebates as a form of remuneration to induce referrals. Yet rebates are legitimate and common business practices outside the health care services business sector. For the numerous people who engage in both health care and non-health care lines of business, they may have become accustomed to providing various inducements to others in their non-health care activities. They may now start to provide similar inducements in their health care lines of business in a manner that violates the statute. To them, these inducements have a "legitimate business purpose," that is, to gain referrals and thereby make money, yet the practice is expressly prohibited by the statute.

We believe that Congress did not require us to specify such generic criteria. The House Committee Report so often cited by commenters directs us to promulgate rules that, "to the extent practical, contain * * * any generic criteria that might apply to business arrangements generally." *Id.* We believe that we have done so. It was only practical to include generic criteria for specific categories of arrangements, such as "fair market value" in the "space rental" safe harbor. We have concluded, however, that a single set of standards for all business arrangements would be of extremely limited value because the subjectivity or arbitrariness in applying the standards to individual fact situations would make such standards of extremely limited value.

We recognize that some of the factors cited by commenters are useful in determining the extent to which a particular arrangement is abusive, and therefore likely to be prosecuted. For example, the more an arrangement involving remuneration offered to induce referrals increases Medicare or Medicaid program costs or results in unnecessary utilization, the more likely it would be that we would have an interest in prosecuting the offense. It must be emphasized that these are not the only factors upon which a determination regarding prosecution is based, and as we have noted "the statute does not require that there be a drain on the public fisc in order for payments to be illegal." *United States v. Bay State Ambulance and Hospital Rental Service, Inc., supra,* 874 F.2d at 32, n. 21.

Comment: Several commenters objected to the regulation because they believed that the OIG had exceeded its statutory authority. In particular, they commented that the OIG does not have authority under section 14 of Public Law 100–93 to narrow the scope of the statutory exceptions, particularly the "discount" exception of section 1128B(b)(3)(A) of the Act. They cited the last sentence of section 14(a) which states, "Any practices specified in regulations pursuant to [sec. 14 of Pub. L. 100–93] shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3)." This sentence led some commenters to conclude that our regulatory authority

does not permit us to refine or clarify the statutory exceptions.

Response: We believe that these commenters have misconstrued the intent of this sentence. The plain language of the first sentence of section 14(a) of Public Law 100–93 requires the Secretary to promulgate regulations "specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act." We believe that the second sentence, which was quoted by many commenters, requires us to add to the exceptions provided in section 1128B(b)(3) of the Act. But we do not believe the intent of this sentence is to prohibit us from interpreting statutory terms used in these exceptions. The clear congressional intent behind the development of these safe harbor provisions is to define innocuous arrangements that should not be prosecuted, including the statutory exceptions. We believe it is in the public interest to provide the health care community with our interpretation of the meaning of certain important statutory terms, for example, "appropriately reflect" in the discount exception or "bona fide employment relationship" in the employee-employer exception.

Comment: One commenter asked the OIG to clarify how it expects health care providers to comply with this regulation when it engages in a business arrangement that may be covered by two or more of the provisions of this regulation.

Response: This comment addresses two potential situations. The first situation arises where a payment practice serves a single purpose (e.g., compensation for personal services), but potentially fits into more than one safe harbor (e.g., the employer-employee safe harbor and the personal services and management contracts safe harbor). In this situation, if the payment practice fits into either one of the safe harbors, it is exempt from criminal prosecution and program exclusion. In the example given, if the payment practice does not qualify as a bona fide employment relationship, it still may receive safe harbor protection under the personal services and management contract safe harbor.

The second situation arises where a payment practice serves multiple purposes (e.g., a payment to recompensate another party for personal services and equipment rental). Under these circumstances, it will be necessary to examine each aspect of the payment practice to determine compliance with each respective safe harbor provision. A person engaged in a "multi-purpose" payment practice who seeks protection will need to document separately his or her compliance with the safe harbor applicable to each purpose being served by the payment practice. Compliance with one provision (for one of the purposes of the payment practice) would not insulate the entire payment practice from criminal prosecution or program exclusion, where another purpose of the payment practice is implemented in a manner which violates the statute.

In the provision-by-provision analysis in section III.C. below, we will discuss specific comments and our responses to other special issues regarding the interrelationships of these provisions.

Comment: Two commenters requested that the OIG clarify the relationship between the statute and various State laws.

Response: Issues of state law are completely independent of the federal anti-kickback statute and these regulations. There is no federal preemption provision under the statute. Thus, conduct that is lawful under the federal anti-kickback statute or this regulation may still be illegal under State law. Conversely, conduct that is lawful under State law may still be illegal under the federal anti-kickback statute.

Comment: We received many comments on the proposed "Ethics in Patient Referrals Act" then pending in Congress aimed at restricting physicians from referring patients to entities in which they have a financial interest, the so-called "Stark Bill." Many of these commenters asked the OIG to either support or oppose this legislation. Others asked the OIG to clarify the relationship of this legislation to the anti-kickback statute and this regulation.

Response: This legislation was enacted as section 6204 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, adding a new section 1877 to the Act. With numerous exceptions, it generally restricts physicians from making referrals for clinical laboratory services to entities in which they have an ownership or other compensation arrangement. These referral restrictions become effective on January 1, 1992.

The legislation, although in many respects aimed at the same problems as we are addressing in this regulation, requires different elements of proof and has different remedies than under the anti-kickback statute. Generally, section 1877 is violated when a "financial relationship" exists between an entity furnishing clinical laboratory services and a physician, and a referral is made or a claim or bill is presented. For the anti-kickback statute to be violated, it must be shown that the remuneration between the two parties was intended to induce the referral of business payable under Medicare or Medicaid. Whereas the anti-kickback statute contains criminal penalties, violations under section 1877 will result in a denial of payment and may result in the imposition of civil money penalties and program exclusions under section 1128A of the Act.

Because of these differences between the two provisions, the conference report includes the following clarification:

> The conferees wish to clarify that any prohibition, exemption, or exception authorized under this provision in no way alters (or reflects on) the scope and application of the anti-kickback provisions in section 1128B of the Social Security Act. The conferees do not intend that this provision should be construed as affecting, or in any way interfering, with the efforts of the Inspector General to enforce current law, such as cases described in the recent Fraud Alert issued by the Inspector General. In particular, entities which would be eligible for a specific exemption would be subject to all of the provisions of current law.

H.R. Conf. Rep. 239, 101st Cong., 1st sess. 856 (1989).

This clear expression of legislative intent to keep enforcement under the anti-kickback statute separate from enforcement under section 1877 makes it inappropriate to adjust our safe harbor provisions to take into account any exception or prohibition under section 1877.

Comment: Thirty-three commenters reacted to our comments in the preamble of the proposed rule regarding the breadth and scope of the statute. Fourteen commenters suggested that these regulations should in no way undermine the scope or strength of the statute. These commenters believe that by adding the civil exclusion remedy for the kickback violations as part of Public Law 100–93, Congress sent a clear and appropriate message to the health care community not to place financial considerations above beneficiaries' interests. Two commenters requested that the statute's term "to refer" should be defined. Other commenters were concerned that diminishing the reach of the statute would create conflicts of interest between health care providers and their patients, and impugn the professional image of physicians. A few commenters opposed the implementation of any safe harbor provisions whatsoever.

Response: Our charge from Congress under section 14 of Public Law 100–93 is to clarify what payment practices will not subject a person to criminal prosecution or exclusion from the Medicare or State health care programs. The process involves both a determination of the scope of the statute and decisions as to how to draft the safe harbor provisions so that they protect only non-abusive relationships.

With respect to the scope of the statute, we do not believe that it is necessary to define any of the statute's terms in the regulation itself. However, the meaning of two of its terms deserve comment (1) "any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind;" and (2) "to induce." These terms demonstrate congressional intent to create a very broadly worded prohibition. Our comments in the preamble to the proposed rule reflected our belief that Congress ratified this intent in their mandate to create these safe harbor provisions.

Congress's intent in placing the term "remuneration" in the statute in 1977 was to cover the transferring of anything of value in any form or manner whatsoever. The statute's language makes clear that illegal payments are prohibited beyond merely "bribes," "kickbacks," and "rebates," which were the three terms used in the original 1972 statute. The language "directly or indirectly, overtly or covertly, in cash or in kind" makes clear that the form or manner of the payment includes indirect, covert, and in kind transactions. Morecver, the statutory exception for discounts demonstrates that Congress prohibited transactions where there is no direct payment at all from the party receiving the referrals. The remuneration in a discount is merely a lowered price that a purchaser would otherwise obtain from a seller, which is made as an inducement to purchase larger quantities.

The statute's legislative history supports this reading of the term "remuneration," and makes clear that the fundamental analysis required of a trier of fact is "to recognize that the substance rather than simply the form of a transaction should be controlling" (123 Cong. Rec. 30,280 (1977), Statement of Chairman of the House Committee on Ways and Means and principal author of H.R. 3, Representative Rostenkowski). Also see H.R. Rep. No. 393, part II, 95th Cong., lst Sess. 53; reprinted in (1977) U.S. Code Cong. & Ad. News 3056; S.Rep. No. 453, 95th Cong., lst Sess. 12 (1977).

The meaning of the term "to induce," which describes the intent of those who offer or pay remuneration in paragraph (2) of the statute, is found in the ordinary dictionary definition: "to lead or move by influence or persuasion" (The American Heritage Dictionary (2d College Ed. 1982)).

The OIG's interpretation of the statute is fully supported by its case law. At the time that the proposed rule was issued, the leading case interpreting the breadth of the statute was *United States* v. *Greber*, 760 F.2d 68 (3d Cir.) *cert. denied*, 474 U.S. 988 (1985). Since publication of the notice of proposed rulemaking on January 23, 1989, two other circuit courts have lent further support to a broad reading of the statute: *Bay State Ambulance*, which was discussed above, and *United States* v. *Kats*, 871 F.2d 105 (9th Cir. 1989).

Kats involved an arrangement between physician offices or clinics, a phlebotomy service ("THC"), and a clinical diagnostic laboratory ("Tech-Lab"). Under the arrangement, THC collected blood and urine samples from physician offices and medical clinics, and forwarded these laboratory specimens to Tech-Lab. Tech-Lab performed the laboratory tests and billed the respective insurance programs, including Medicare and Medicaid. Tech-Lab kicked back 50 percent of its proceeds to THC, which in turn kicked back part of its proceeds to the various physician offices and clinics, including a clinic owned by Yan Kats. Kats and others were prosecuted and convicted under the statute.

In upholding Kats's conviction, the United States Court of Appeals for the Ninth Circuit became the first court specifically to adopt the holding in *Gerber* that "if one purpose of the payment is to induce future referrals, the [M]edicare statute has been violated." 760 F.2d at 69. The *Kats* court held that the statute is violated unless the payments are "wholly and not incidentally attributable to the delivery of goods or services." *Id.* 871 F.2d at 108. The court upheld a jury instruction that read, in part, "It is not a defense that there might have been other reasons for the solicitation of a remuneration by the defendants, if you find that one of the material purposes for the solicitation was to obtain money for the referral of services." *Id.* 871 F.2d at 108, n.1.

Because the statute is broad, the payment practices described in these safe harbor provisions would be prohibited by the statute but for their inclusion here. In mandating this regulation, Congress directed us to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements. We believe that we have accomplished this task in a manner that will not restrict our ability to prosecute, either criminally or civilly, abusive schemes that violate the statute. However, these safe harbor provisions do not constitute a guarantee that a health care provider whose practice conforms to a particular safe harbor will not engage in abusive practices. For this reason, we intend to monitor business arrangements that comply with the terms of these safe harbor provisions, particularly investment interests (see section III.C.1.b.ii. below), to determine whether abusive arrangements exist within the parameter of a particular safe harbor. If abusive arrangements are found to exist, we will entirely withdraw or modify any provision as appropriate.

Comment: A small number of commenters requested clarification as to whether the statute prohibits remuneration in return for referrals or other arrangements to induce services or items reimbursed under Medicare alone, or whether the conduct prohibited by the statute includes referrals or other arrangements to induce services or items reimbursed by Medicaid and other State health care programs.

Response: We agree that clarification is needed, and have amended the final rule to make clear that the statute, and hence these safe harbor provisions, apply to items or services which may be paid in whole or in part under Medicare or a federally funded State health care program, such as Medicaid. However, because commenters have expressed particular concern about the applicability of these provisions to items and services payable under the Medicare and Medicaid programs, our discussion of comments and responses often refer solely to these two programs.

B. Comments on Areas That the OIG Invited Comments

In this section, we discuss four issues on which we specifically invited public comments: continuing guidance, notice to beneficiaries, preferred provider organizations (PPOs), and waiver of coinsurance and deductible amounts for inpatient hospital care. We also requested comments on suggested standards for two additional investment interest provisions that would protect investors, such as limited and general partners, investing in small entities. Our discussion of those comments and our responses are contained in the provision-by-provision analysis of

investment interests (see section III.C.1. below).

1. Continuing Guidance

Comment: We received a large number of responses to our invitation for comments on how the OIG can best inform health care providers about fraudulent practices, and can best ensure that the safe harbor regulation remains current as new health care business practices develop. Many of these commenters suggested that the Department issue advisory opinions about the legality of proposed business arrangements under the statute. Some commenters requested that the Department implement a mechanism for informing health care providers about business practices that raise problems under the statute.

Proponents of advisory opinions argued that such a mechanism would provide guidance concerning activities unaddressed by the safe harbor regulation, curb illegal payment practices, and keep the Department informed of industry developments. These commenters asserted that the Department has authority to issue advisory opinions pursuant to its general statutory authority to promulgate regulations, and pursuant to the specific authority under Public Law 100–93 to promulgate this regulation. The commenters contended that advisory opinion rulings would not hamper the Department of Justice's prosecutorial discretion under the statute, because the immunizing effects of advice given would be limited to the facts disclosed. The commenters also claimed that several other agencies employ advisory opinion procedures in administering laws under their respective jurisdictions.

Response: We understand and appreciate providers' desire for legal security in their business relations. Consistent with our mandate under Public Law 100–93, we will continue to make efforts to inform health care providers about business practices that may subject them to criminal prosecution or program exclusion.

We have concluded that we will not provide a mechanism responding to individual requests for advisory opinions about the legality of a particular business arrangement under the statute. The statute is primarily a criminal statute, and the Department of Justice is vested with exclusive authority to enforce all criminal laws of the United States. See sections 516, 519 and 547 of title 28 of the United States Code. A plethora of case law holds that this exclusive authority extends to all decisions to initiate, or to decline to initiate, criminal prosecutions. See *Smith* v. *United States*, 375 F.2d 243, 247 (4th Cir. 1967), *cert. denied* 389 U.S. 841; *Powell* v. *Katzenbach*, 359 F.2d 234 (D.C. Cir. 1965), *cert. denied* 384 U.S. 906; *United States* v. *Wong Kim Bo*, 466 F.2d 1298 (5th Cir. 1972); *United States* v. *Kysar*, 459 F. 2d 422 (10th Cir. 1972). For these reasons, this Department cannot, through advisory opinions, immunize health care providers from criminal prosecution under the statute.

The general or specific statutory authorizations cited by commenters do not supersede the case law cited above. The Department's general authority as an executive agency to promulgate regulations governing conduct within the Department's jurisdiction does not, implicitly or explicitly, include authority to make judgments that are within the exclusive domain of another agency. Neither does our mandate, under Public Law 100–93, to promulgate this regulation provide such authority. Our charge to immunize, by regulation, conduct and arrangements potentially falling under the statute does not include judging whether the conduct of particular individuals violates the statute.

Aside from these legal impediments, it is impossible as a practical matter to give meaningful advice with respect to liability under the statute in the context of a letter ruling. The statute requires proof of a knowing and willful intent to induce or arrange for referrals or for other business reimbursable under the Medicare or Medicaid programs. See *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra*, 874 F.2d at 29 ("The gravamen of Medicare Fraud is inducement"); *United States* v. *Greber*, 760 F. 2d 68 at 71 ("The statute is aimed at the inducement factor"). Thus, the extent to which conduct is motivated by inducing or arranging for referrals will, in large part, determine liability under the statute. The types of factual summaries that typically accompany requests for advisory opinions—descriptions of proposed management contracts or lease agreements, or prospectuses of joint ventures—are likely, however, to be insufficient for purposes of understanding the motives of the parties.

In our experience, assessing whether parties to a particular scheme intend to induce referrals requires substantial investigation resources. Requests for advice typically do not furnish complete and objective accounts of all the facts necessary to determine the subjective intent of the parties. In addition, requests for advice involving business arrangements not yet consummated are especially difficult to analyze because the motives of the parties to induce referrals often become apparent only when the arrangement is operational.

Furthermore, we do not believe that an advisory opinion process is a necessary or appropriate mechanism for keeping the Department aware of new developments in industry business practices, and ensuring that the regulation remains current. As we have discussed above, the legislative history of Public Law 100–93 clearly directs the Secretary to "formally re-evaluate the anti-kickback regulations on a periodic basis and, in so doing, * * * solicit public comment at the outset of the review process." H.R. Rep. No. 85, *supra*, at 27. We believe that periodic updating of this regulation, with the opportunity for public input, is the best way to ensure that these regulations remain practical and relevant in the face of changes in health care delivery and payment arrangements. The need to clarify, interpret, fine tune, expand, or otherwise alter this regulation in response to public and industry input will provide an occasion for us to respond to unanticipated, newly developing, or other beneficial arrangements.

Despite commenters' arguments that other Federal agencies offer the public mechanisms for obtaining advisory opinions, only one other agency of which we are aware, the Federal Elections Commission (FEC), provides any advice with respect to a statutory provision that prohibits "knowing and willful" conduct. The FEC issues such advice under specific statutory authority (2 U.S.C. 437d(a)(7)). It is our understanding, however, that the FEC's advisory opinions do not inquire into whether any conduct is knowing and willful. Thus, the FEC's practice follows the general rule that agencies will refrain from rendering prospective advice on issues of intent. For example, the IRS has stated that it will not issue advice as to the "due diligence" or "good-faith" of parties. See Rev. Proc. 88–3, 1988–1 IRB 29.

As an alternative, we believe that OIG fraud alerts are the best mechanism for imparting practical and continuing guidance to individuals and entities seeking to avoid violations of the statute. The fraud alert program, implemented in March of 1984, was designed to increase our effectiveness in preventing fraud in this Department's programs by highlighting conduct likely to be illegal. Since 1984, we have issued over 100 fraud alerts on subjects unrelated to the anti-kickback statute. On April 24, 1989, we initiated

distribution of a Special Fraud Alert on Joint Venture Arrangements to all individuals and entities participating in Medicare, which gave examples of specific characteristics of provider-owned entities that, in our view, might result in abusive or unlawful business arrangements. By identifying what we consider to be suspect features of limited partnerships and other joint ventures (including potentially abusive practices for selecting and retaining investors, for structuring the legal entity or entities involved, and for distributing profits), the Special Fraud Alert communicated our views about the legitimacy of potential or existing ownership arrangements. We believe that fraud alerts can be equally as educational about other areas of enforcement of the statute, and plan to distribute similar information as the need arises.

Comment: A few commenters inquired about the binding effect of advisory letters written by HCFA in the 1970s, when that agency was responsible for enforcing the statute. The commenters suggested that these letters may serve to protect health care providers who engage in a particular business arrangement that was approved by HCFA at that time even though the OIG has not now proposed a safe harbor for that arrangement.

Response: No person in the Department or with the fiscal intermediaries or carriers is, or ever has been, authorized to permit a practice that the statute makes illegal. The Department's lack of authority to provide legal advice on the application of the statute to specific factual situations has been consistently communicated to the public for years. Consequently, no person may reasonably rely on any such advice, especially when that advice is a letter written to a third party about a business arrangement different from the one in which the party is engaging. In sum, the so-called advisory letters may not be regarded in any way as authoritative.

The only authority to legalize conduct is this safe harbor regulation. This regulation supersedes any prior communications from the Department regarding business practices considered not subject to prosecution, and is the only formal mechanism to set forth business arrangements or payment practices that will not be prosecuted under the statute.

Comment: Two commenters requested the OIG to issue selective opinions on issues affecting a class of providers that arise under the statute and safe harbor regulations, even if we decline to provide advice about specific business arrangements or activities.

Response: As we have said, we plan to provide guidance on generic issues through fraud alerts distributed to the provider community. In addition, we remain open to examining the usefulness of other mechanisms for informing the public and health care provider groups about the types of new business arrangements to which the OIG will give investigative priority.

2. Notice to Beneficiaries

Comment: Commenters overwhelmingly supported requiring health care providers to disclose to patients any financial relationships with sources of referral. They argued that such disclosure would not be burdensome, and that many codes of professional ethics, as well as many state statutes, already mandate such disclosure.

Response: With one exception, we have decided not to require such disclosure to qualify under a particular safe harbor provision. First, the activities covered under each safe harbor provision are by definition activities that we deem have a low potential for abuse. Second, disclosure in and of itself would not provide a significant additional assurance that abuse would not occur, even though disclosure may reduce the potential for abuse somewhat by increasing consumer awareness of the relationship between health care providers. Finally, it is possible for a health care provider to cast a disclosure to fit that provider's promotional objective, which is exactly the opposite result from that which we would want to achieve.

The one provision in which we condition safe harbor protection on disclosure is that of referral services. Referral services help beneficiaries make their initial contact with the health care system before a relationship of trust is established with a particular health care provider. Without disclosure of the manner in which a provider of services was selected or rejected by a referral service and the relationship between the service and health care providers, a consumer has very little information upon which to base his or her trust in the practitioner to whom the consumer is being referred. For example, a consumer may well decide to put more trust in a surgeon referred by the referral service if the consumer knew that the referral service only uses board certified physicians. On the other hand, a consumer may feel less confidence in a referral if any physician, no matter what his or her disciplinary record, were one of the referral service's members. Consequently, we are confident that, in this instance, disclosure represents a meaningful added protection.

Although we are not requiring disclosure of financial interests under the other safe harbor provisions, we consider disclosure of financial interests in entities to which health care providers refer patients an ethical duty (See, for example, rule 8.03 of the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association, Chicago, Ill. 1989). Also, to the extent that disclosure affects a patient's freedom of choice and quality of care, it may be necessary to enable a patient to give informed consent.

3. Health Maintenance Organizations, Preferred Provider Organizations and Other Managed Care Plans

We received a number of responses to our invitation to comment on how to protect health maintenance organizations (HMOs), preferred provider organizations (PPOs), and other managed care plans. In addition, we received many other comments regarding HMOs that waive coinsurance and deductible amounts, and price reduction agreements negotiated by these and other types of health benefit plans. We are including these comments in this section.

Comment: Two commenters requested safe harbor protection for HMOs that waive the beneficiary's obligation to pay coinsurance and deductible amounts. They believed that this was a common practice among HMOs. In addition, a few commenters pointed out that some PPOs negotiate agreements with contract health care providers for those providers not to charge the health plan or enrollee for some or all of the coinsurance and deductible amounts they are owed for furnishing services to enrollees. Under such an agreement, when the contract provider bills the Medicare program directly (and not the health plan) and agrees to waive all coinsurance and deductibles, the commenters typically phrased the agreement as one "to accept Medicare payment as payment in full." One commenter specifically objected to this practice.

Response: We agree that protection should be given to prepaid plans with contracts and agreements with HCFA and State agencies for waiver of beneficiary obligations to pay coinsurance and deductible amounts. However, as will be discussed below, we do not agree that such protection is warranted at this time for PPOs and prepaid plans that do not have contracts

or agreements with HCFA or State agencies.

Health plans offer a variety of incentives to attract beneficiaries to become enrollees. In many instances, HCFA permits such HMOs and competitive medical plans (CMPs) to waive the premiums attributable to the coinsurance and deductible amounts. Further, HMOs and CMPs under a risk contract with HCFA are required under certain circumstances to reduce coinsurance and deductible amounts or offer additional benefit options.

The routine waiver by a prepaid health plan of beneficiaries' obligation to pay coinsurance and deductible amounts is clearly distinguishable from such routine waiver by other health care providers, such as hospital outpatient departments, physicians, or durable medical equipment suppliers. Two principal characteristics distinguish a health plan's routine waiver of cost-sharing amounts from that of other health care providers. First, a health plan's routine waiver program is inextricably intertwined with the offering of a comprehensive package of covered benefits, and is not offered for the purchase of an individual item or service. Quite often, in the case of prepaid plans, the routine waiver of cost-sharing amounts is made in the form of a reduction or waiver of the beneficiary's premium and may also be combined with the offering of increased covered benefits. Thus, the routine waiver of cost-sharing amounts is generally not an incentive to use a particular item or service at the time it is furnished.

Second, although cost-sharing requirements can serve to control utilization, HMOs and other health plans under contract with HCFA or a State agency have built-in incentives to control unnecessary utilization, or have their utilization and costs monitored by HCFA or the State agency. Thus, the issue of potential overutilization (with increased costs to the programs) is adequately dealt with without resort to imposing the obligation on beneficiaries to pay coinsurance and deductible amounts.

Therefore, we expect to publish at a later date an additional safe harbor provision to protect prepaid health plans that have a contract or agreement with HCFA or a State agency where the health plan offers beneficiaries increased benefits coverage, reduced cost-sharing amounts (coinsurance, deductibles, or copayments), or reduced premiums where certain standards are met. Because of the limited scope of the comments we received on HMOs, PPOs and managed care plans, we expect to publish at a later date an interim final rule in order to solicit additional comments from the public on this new safe harbor provision.

This new safe harbor provision will not protect incentives offered to beneficiaries by health plans, such as PPOs, that are not operating under a contract or agreement with HCFA or a State agency. Unlike health plans with such contracts or agreements, we are not confident that all PPOs that engage in these negotiated waiver agreements properly protect the Medicare and Medicaid programs against overutilization. And we did not receive sufficient comments on the different types of PPOs for us to distinguish the characteristics of a PPO engaging in these negotiated waiver agreements where the Medicare and Medicaid programs are properly protected.

Comment: Several commenters requested the OIG to protect a variety of arrangements between HMOs, PPOs, competitive medical plans (CMPs), managed care plans, and other health plans on the one hand, and medical groups and other health care providers who furnish items and services to the health plans at a reduced price on the other hand. A few of these commenters observed the benefits that can be achieved when a health care provider offers discounts to these organizations. Several commenters recommended special treatment for relationships between HMOs and health care providers, such as physicians and hospitals, involving the leasing of space and equipment and contracting for personal services. One commenter requested special safe harbor protection for "[a]ll transactions between an HMO and contracting medical groups * * * if the medical group provides over 90 percent of its services to HMO members."

Response: We agree that there is a need to provide safe harbor protection for certain practices between managed care plans and health care providers. Thus, we are expecting to publish a rule that will protect many of these price reduction arrangements where certain standards are met. For the same reasons as stated above, we are expecting to publish this safe harbor provision as an interim final rule with an opportunity for additional comments from the public.

The safe harbor provision we are expecting to publish will only protect agreements between health plans and contract health care providers for the sole purpose of furnishing items and services covered by the health plan, Medicare, or Medicaid. In other words, for the reasons explained below, we are not protecting in this provision the contracts between health plans and contract health care providers for these providers to furnish services other than covered benefits, such as peer review and management services.

As with all safe harbor provisions, where two parties engage in a multi-faceted payment arrangement where protection is sought from more than one safe harbor, we expect separate justifications to be clearly set forth for each provision for which protection is sought. Where HMOs contract with physicians and other health care providers for the furnishing of services other than covered health care services, we believe that HMOs, PPOs and other prepaid health plans will be able to conform their arrangements to the appropriate safe harbor provisions. For example, many contract health care providers furnish peer review, marketing services, or pre-enrollment screening for HMOs. For the remuneration attributable to the furnishing of such services to be protected, it must comply with the personal service/management contracts safe harbor provision. Also for example, the remuneration attributable to the lease of space or equipment must comply with those respective safe harbor provisions.

We are not convinced that merely because a medical group has a large majority of its business with an HMO that a special across-the-board exemption for all transactions is warranted. HMOs operate under a variety of payment mechanisms, both with respect to the Medicare and Medicaid payments they receive and the payments they make to physicians. Although in many cases the incentive structure in which HMOs operate is designed to protect against overutilization of service, this incentive structure may not extend to fee-for-service arrangements.

Further, even though many HMOs have generally operated largely free of fraud and abuse problems, we are aware of some HMOs that have abused their contractual relationships with medical groups, where individuals in the groups have engaged in abusive activities on behalf of the HMO, or where the medical group has compromised the interest of beneficiaries in order to keep the vital HMO contract. In at least one case, a criminal conviction was obtained for such a practice. Although safe harbor protection is warranted for certain contractual relationships between health plans and contract health care providers, we also intend to use our authorities aggressively to monitor closely and, where appropriate, penalize

any abusive relationships between these parties to assure that medically necessary services of a high quality are available and accessible to all enrollees.

4. Waiver of Beneficiary Deductible and Coinsurance Amounts

Comment: The OIG received numerous comments on the establishment of a safe harbor for waiver of hospital inpatient coinsurance and deductible (copayment) amounts owed by program beneficiaries. Many commenters requested the OIG to provide safe harbor protection for routine hospital waiver or partial reduction of inpatient fees not subsequently claimed as bad debts because the practice would benefit hospital inpatients without increasing program costs. Some commenters urged the OIG to protect the submission of bad debt claims where copayments were routinely waived for limited categories of patients, such as seniors. On the other hand, several commenters were concerned that permitting hospital waiver of inpatient copayments would encourage overutilization of hospital services and promote cost-shifting to patients with nongovernmental insurance policies.

Response: Since October 1, 1983, when the prospective payment system (PPS) for reimbursing hospital inpatient services was implemented, we have been aware of hospitals that routinely waive Medicare beneficiary deductibles and coinsurance charges for inpatient hospital services in order to attract patients. Because the waiver of patient charges constitutes an inducement to use services in exchange for something of value (the forgiveness of financial obligation), this practice violates the statute. However, assuming the waived amounts are not later claimed as bad debt, the practice appears to cause no direct financial harm to the Medicare program because hospitals receive a pre-determined payment amount under PPS regardless of their costs or charges. Moreover, due to hospital peer review requirements and the relatively fixed level of patient demand for hospital inpatient services, waiver of inpatient beneficiary fees is not likely to increase utilization significantly. Furthermore, if hospital waiver policies do not discriminate on the basis of length of stay or type of disease, the potential for program abuse appears minimal.

In addition, we know of no data, nor have commenters produced or referred us to any, indicating that routine hospital waivers of inpatient copayments owed by program beneficiaries will shift the costs of care to non-Medicare patients. Rather, we assume that most hospitals that choose to waive these amounts do so because the hospital more than makes up in increased volume for any initial "loss" resulting from not collecting the full amount to which it is entitled. Although we believe there is little risk of "cost-shifting" to the non-Medicare population, the first standard in this provision makes clear that any such cost-shifting is not protected.

We do not agree, however, that health care providers who choose to waive copayment amounts routinely for some or all of their patients should be permitted to claim such amounts as bad debt. Such a rule would muddle two very distinct Medicare policies. Traditionally, Medicare health care providers are reimbursed for uncollectible payments owed by beneficiaries. See 42 CFR 413.80. This rule requires, among other things, that health care providers make an indigence determination on a case-by-case basis, or reasonable collection efforts, prior to recouping bad debt losses from the program. See also Provider Reimbursement Manual, sections 310, 312, HCFA Pub. No. 15–1. Thus, payment of Medicare bad debts, unlike routine waivers of Medicare cost sharing amounts protected under this safe harbor regulation, are only authorized under certain conditions pertaining to the uncollectability of payments and the indigence of beneficiaries. Health care providers who routinely waive beneficiary copayments in accordance with this safe harbor regulation, and do not make case-by-case indigence determinations or otherwise prove uncollectability under 42 CFR 413.80, cannot deduct expenses as bad debt. Where such an unlawful expense is claimed, the hospital may be subject to civil or criminal prosecution.

Comment: Many commenters requested the OIG to extend safe harbor protection to waiver of patient fees imposed for a wide array of provider services. Several commenters sought protection for waiver of beneficiary copayments for part A services furnished by other cost-based health care providers, such as skilled nursing facilities and home health agencies. These commenters argued that where services are paid on a reasonable cost basis, just as where services are reimbursed under PPS, waiver of beneficiary copayments causes no financial harm to the program. Other commenters sought still broader protection under the safe harbor for copayments for services under part B, arguing that the limited protection granted for inpatient hospital copayments was discriminatory.

Response: We believe that protection is uniquely appropriate for waiver of patient charges related to hospital inpatient services. A routine waiver program will not likely increase patient demand for these services, since beneficiaries cannot admit themselves, and hospital overnight stays are inherently undesirable from a patient's perspective. Thus, it is unlikely that a routine waiver program will affect utilization. By contrast, cost-based fee-for-service health care providers, such as home health agencies and nursing homes, may be able to offset their losses resulting from their waiver of copayments by increasing their Medicare allowable costs. Such manipulation of reimbursement amounts would be virtually impossible to prevent. Thus, we do not believe that the protection offered under this safe harbor provision should be extended to routine waiver of beneficiary copayments by cost-based fee-for-service health care providers.

Routine waiver of beneficiary copayments by individuals or entities reimbursed on the basis of reasonable charges even more clearly affects program costs. When charge-based health care providers routinely fail to collect all or part of beneficiary copayments authorized by law, and then submit actual charges to Medicare as if copayment amounts were collected, these charges increase customary and prevailing rates which, in turn, inflate program costs. The Medicare Carriers Manual makes clear that in these situations, a health care provider is required to reduce his or her actual charge. See section 5220, HCFA Pub. No. 14. Thus, we believe that individuals and entities who fail to reduce actual charges submitted to Medicare are misrepresenting their charges, and may be subject to civil and criminal liability for submitting false claims.

We are aware that some local government health care providers, including county hospital outpatient departments, routinely reduce beneficiary payments at the time of service for the extremely indigent populations they serve. For these health care providers, offering patients the option of reduced payment at time of service may be a more successful collection strategy than subsequently billing patients for the entire copayment. This practice, while not protected by this safe harbor regulation, would not likely violate the statute so long as the partial forgiveness of the copayment obligation was strictly a pragmatic

financial decision and not an inducement to patients to purchase medical services. We see no purpose in interfering in the mission of local governments or other hospitals that serve primarily indigent populations when they reduce beneficiary fees for those unable to pay. Such health care providers, typically, have no need to engage in sophisticated marketing strategies to induce more business.

Comment: One commenter advised the OIG that in accordance with 42 U.S.C. 254b(f)(3)(F) and 254c(e)(3)(F), federally qualified migrant and community health care centers are required to develop a sliding fee schedule for patients based upon ability to pay, which could result in waiver of part or all of the Medicare coinsurance and deductible amounts. These commenters argued that such waivers, although mandated under Public Health Service Act grant programs, could be deemed a violation of the statute.

Response: In section 4161(a)(4) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, Congress enacted a fourth statutory exception to the statute, which exempts a waiver of any Medicare Part B coinsurance by a Federally qualified health care center to any individual who qualifies for subsidized services under the Public Health Services Act. Thus, we are providing a safe harbor provision for this exception. In addition, we are making this safe harbor applicable to similarly situated individuals who receive services under the Maternal and Child Health Service Block Grant program (see section 505(2)(D) of the Act; 42 U.S.C. 705(2)(D), or who are Medicaid beneficiaries.

Comment: Six commenters argued that protecting routine waiver of beneficiary payments for inpatient hospital services would discourage competition from ambulatory surgical centers (ASCs).

Response: Although the granting of safe harbor protection for the waiver of inpatient copayments gives practitioners or their patients an incentive to choose inpatient hospital settings over outpatient settings, we believe that the activities of the PROs reasonably ensure that services are furnished in outpatient settings where appropriate. Therefore, we believe that the granting of safe harbor protection only for inpatient services is unlikely to draw patients away from ASCs and other outpatient settings.

Comment: A few commenters requested the OIG to protect waiver or discounts of inpatient copayments where hospitals and physicians offer this benefit not to patients directly, but to insurance companies, HMOs, or employer or union medical service plans, that have assumed liability for the beneficiary portion of payment under the terms of their insurance policies. Insurers offering these insurance benefits may attempt to negotiate with hospitals to reduce or eliminate the beneficiary portion of reimbursement in exchange for endorsing the hospital as a preferred provider or offering other tangible benefits.

Response: This safe harbor provision protects the waiver by hospitals of inpatient copayment amounts only where these amounts would otherwise be paid by Medicare beneficiaries themselves. In paragraph (k)(1)(iii), we have expressly made this provision inapplicable to negotiated price reduction agreements between health care providers and third-party payers, even where the reduction involves beneficiary copayments for which the third party payor has assumed liability as part of a Medigap policy. As we discussed in the section immediately above, we are expecting to publish an additional safe harbor provision to protect HMOs, CMPs and HCPPs under contract with HCFA or a State agency that waive coinsurance and deductible amounts owed by beneficiaries where certain standards are met.

Comment: Two commenters sought protection for the waiver of patient copayment amounts for the first eight days of care in a skilled nursing facility (SNF) after discharge from a hospital under the same ownership. These commenters stated that protection was needed to enable the smooth transfer of patients who were ill, and to allow hospital beds to be vacated for sicker patients.

Response: We understand that health care providers operating both hospitals and SNFs may, for entirely legitimate reasons, wish to continue waiving SNF copayment amounts when transferring hospital patients into the SNF for a brief period. In section III.D. below, we discuss in more detail the special considerations that exist where the hospital and SNF are wholly owned by a single "parent" entity, or where one of the facilities is the sole owner of the other.

Comment: One commenter requested the OIG to expand the safe harbor provision for waiver of hospital inpatient copayments to cover the provision of free items or services such as meals or presurgical overnight stays, samples of products from manufacturers, or blood screening and other testing services. The commenter suggested that such free gifts benefit patients without causing harm to the program, so long as there is no obligation to purchase additional items or services upon receipt of the free gifts.

Response: We decline to protect the offer of free gifts to beneficiaries within this safe harbor provision, as we have declined to protect this practice within the safe harbor provision governing discounts. The statute clearly contemplates that illicit remuneration may involve payments "in cash or in kind." The practice of offering free gifts may well induce beneficiaries to purchase additional or unnecessary items or services. Such inducements could easily become excessive, and there is no distinct financial or other cut-off point below which we could be sure that gifts remained non-abusive. Because we understand that such inducements are an area of significant abuse, we believe that protection of this practice would be unwarranted.

C. Provision-by-Provision Analysis of Safe Harbors

1. Investment Interests—§ 1001.952(a)

The OIG received close to three hundred comments on the issue of providing safe harbor protection for payments from investment interests. These comments are divided into three broad categories: (a) Comments on the proposed safe harbor provision for payments from investments in large publicly traded entities; (b) suggestions for safe harbors for payments from investments in small entities such as limited partnerships, about which we solicited comments, and (c) proposals for protecting payments from other investment interests. For convenience, we are discussing all of these comments in this section. Before discussing the comments and responses for these three broad categories of investment interests, we will discuss general issues raised with respect to investment interests.

Comment: We received a number of comments asking the OIG to clarify the types of investors and investment interests to be protected. In particular, we received many comments urging the OIG to protect indirect investment interests held by family members and to protect debt as well as equity investments.

Response: We are adding a definition of the terms "investor" and "investment interests" to this safe harbor provision. We are defining an "investor" to include both individuals and entities who either directly or indirectly hold an investment interest in an entity. Our definition includes examples, which are not intended to be an exhaustive list, of

ways that investment interests may be indirectly held. For example, a family member of a referring physician may hold the investment interest in the joint venture entity, or a referring physician may have a legal or beneficial interest in an entity, such as his or her group practice, a trust or a holding company, where that entity directly holds the investment interest in the joint venture entity. In both cases, we view the physician as having the ownership interest in the joint venture entity.

In many cases we distinguish investors who do business with the entity in which they have invested from other investors who are exclusively seeking a return on their investment. We call an investor who does business with the entity as "an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity." This classification is meant to include all investors who do business in any manner with the entity. Except as noted below, we do not limit this category to investors who actually make referrals. Rather, our focus is on the status of the investor and the ability to make or influence the referral stream or level of business activity for the entity. Such investors include not only physicians, but hospitals and other entities capable of influencing referrals.

We note that this category of investor doing business with the entity also includes those investors who furnish items and services to the entity as well as those investors who otherwise generate business for the entity. Thus for example, if a durable medical equipment (DME) supplier and hospital both enter into a joint venture to furnish DME to patients when they leave the hospital, both the DME supplier and the hospital fit within this category of investor doing business with the entity.

There are some very limited situations where, because of the special status or location of the investor, he or she does not fit within this category of investor doing business with the entity. For example, for the most part, retired physicians no longer make or influence referrals. In addition, typically a physician who resides and practices in a separate service area from the entity is similarly not "in a position to make or influence referrals." Or an investor could simply make an agreement barring him or her from actually making or influencing referrals to the entity. In all three examples, the determination whether an investor should be classified as doing business with the entity in which he or she has invested is a factual question. However, we will accept a written stipulation that for the life of the investment the investor will not make referrals to, furnish items or services for, or otherwise generate business for the entity. We emphasize that, because of the potential for abuse of this stipulation agreement, the investor must be bound to this agreement for the life of the investment as long as he or she remains an investor.

Finally, our definition of the term "investment interest" makes clear that debt as well as equity investments are protected.

a. *Large Publicly Traded Entities.*

Comment: Several commenters questioned the relationship of this proposed safe harbor provision to the rules of the Securities and Exchange Commission (SEC) for the registration of securities. For example, some suggested that the OIG should exempt all investment interests that are traded on a publicly regulated exchange, while another suggested that public trading be an additional condition for protection. In addition, a variety of comments were received regarding the standards adopted from the SEC rules that, in order for payments from investment interests in an entity to be protected, the assets of the entity must exceed $5 million and the number of shareholders must exceed 500 persons (the so-called "$5 million asset/500 investor rule"). While some suggested the $5 million test was too high, one suggested that it was too low. One commenter suggested that the 500 shareholder test was too high, and another suggested that the OIG require either $5 million in assets or 500 shareholders, but not both. Finally, another commenter suggested that the OIG protect an investment in an entity any time the asset level was greater than $5 million.

Response: We intended to protect profit distributions made to referring investors in large publicly traded corporations where the investment interest was obtained at fair market value through trading on a publicly regulated exchange. The remuneration received by these investors is so tangentially related to their referrals that the potential for abuse is minimal.

As we stated in the preamble of the proposed rule, we adopted the SEC registration rules from l5 U.S.C. 78*l*(g) and 17 CFR 240.12g–1, which generally require entities with more than $5 million in assets and more than 500 investors to register with the SEC. At the time, we had believed that such a test would protect payments from only those entities that are actively traded on a national securities exchange.

Based on the comments we received and our experience in enforcing the statute, we believe that in many respects the SEC rules are not applicable for the purposes of protecting against abuse. In particular, the $5 million threshold is too low. An entity that owns two magnetic resonance imaging (MRI) machines may well meet this test. Thus, we are changing the asset threshold level from $5 million to $50 million. Publicly traded entities of this size are sufficiently large to assure that abuse is minimal.

In addition, the SEC's other criteria of 500 investors does not provide meaningful protection against abuse. We recognize that in many cases a large number of investors can dilute the influence of one investor's referral patterns on the level of payments that he or she receives. However, it has been our experience that many sham joint ventures try to obtain many investors, each of whom contribute nominal investments, as a mechanism to lock-in the loyalties of as many physicians as possible. Thus, depending on the factual circumstances of a particular joint venture, a large number of investors could either be abusive or minimize abuse.

We are making other revisions to this first investment interest safe harbor provision to provide greater clarity consistent with our original intent. Thus this safe harbor as revised contains two definitional prerequisites in paragraph (a)(1) for the type of entity we are protecting, and is followed by five standards, all of which must be met to the extent they apply to the investment interest in question.

For an entity to be protected under this safe harbor, it must meet two definitional prerequisites. The first prerequisite to qualify for protection is that the assets of the entity must be measured any time within the previous fiscal year or the previous 12 month period. This time period is different from the SEC rule, which we believe to be overly restrictive for the purposes of this safe harbor. The time period for measuring compliance which we are adopting will mean for all practical purposes that growing entities will be protected as soon as they reach compliance with all the preconditions and standards in this safe harbor, rather than having to wait for the next fiscal year as the SEC requires. In addition, the time period we are specifying permits an entity to retain safe harbor protection for a limited time period even though it is no longer in compliance with the $50 million asset threshold in this rule. During this time period, an entity

will have the opportunity to bring itself back into compliance.

The second definitional prerequisite is that the entity must possess $50 million in the form of undepreciated net tangible assets. This clarification of what we mean by $50 million in assets removes many assets which we never intended to include within the scope of protection. We are excluding all intangible assets such as the company's valuation of its name recognition and stock and other forms of goodwill. We are excluding such assets because their valuation is too subject to "creative" accounting or appraisal techniques. The assets must also be reduced by any liabilities. Thus, a corporation only has $1 million of net tangible assets when it buys a $5 million piece of equipment with a $4 million loan. However, we are excluding from the calculation of assets any reductions in the value of assets due to depreciation. We believe it is inappropriate for an entity to lose safe harbor protection as a result of the aging of its assets. Further, we do not want to create incentives to replace equipment unnecessarily merely for the entity to regain safe harbor protection based on the value of new equipment. We are also clarifying that the reporting of net tangible assets must be based on net acquisition costs of purchasing such assets from an unrelated entity. The use of net acquisition costs in this rule is a generally accepted accounting principle, and makes clear that, for the purposes of this rule, we will not accept a company's use of current market valuations of assets. Further, we intend to use the Medicare related party rule, 42 CFR 413.17, to assure that the acquisition costs from the purchase of an asset is only based on a bona fide purchase through an arm's length transaction. Our final clarification in how to apply the $50 million asset test is that assets unrelated to a company's health care line of business cannot be used in the calculation of assets. For example, a nursing home corporation could be a subsidiary of a hotel chain. The hotel assets cannot be used for purposes of qualifying for the $50 million asset test. However, with the exception of the related party rule, it is not our intent to require corporations to be familiar with cost reimbursement rules of 42 CFR part 413. Tangible assets used in furnishing items and services may be counted even though they may not be allowable costs under part 413. The information necessary to determine compliance with this $50 million asset test is readily available in the accounting books of entities, and the accounting methods for determining compliance are fully consistent with generally accepted accounting principles. Thus, an independent certified public accountant should have little trouble certifying an entity's compliance with these requirements.

This safe harbor contains five standards, not all of which may be applicable in every instance. The first two standards, paragraphs (a)(1) (i)–(ii), which will be discussed here, focus on the nature of the investment interest. (The three remaining standards are being added in response to other comments which will be discussed below.)

The first standard (see paragraph (a)(1)(i)) applies only to an investment interest in an equity security, and requires such a security to be registered with the SEC under 15 U.S.C. 78*l* (b) or (g). We had considered but are rejecting an alternative standard that the investment interest must merely meet the SEC registration qualifications. This requirement of actual registration provides a clear bright-line rule, and is an indication of good-faith entry into the public securities markets, which is a significant factor underlying the rationale for this safe harbor. In addition, we are requiring the investment interest actually to be registered with the SEC because many exemptions exist to the SEC's $5 million asset/500 investor rule, which permit many entities to be actively traded but not to be registered with the SEC, and thus not under its oversight. See 15 U.S.C. 78*l*(g)(2). However, the SEC's reasons for granting an exception may not be consistent with the purposes of this rule, and thus we see no particular reason to protect securities simply because they qualify for an SEC exemption. We note that one such exemption under 15 U.S.C. 78*l*(g)(2) is for securities listed and registered on a national securities exchange. Such securities must comply with 15 U.S.C. 78*l*(b), and for the purposes of this rule we are requiring such securities to be registered with the SEC.

We are not applying the registration requirement to investment interests that involve debt securities because we believe that the extra safeguard of SEC registration is unnecessary. Publicly traded debt instruments, although protected under this safe harbor, are not the type of investment interests that are the focal point of this rule. Although the potential for abuse is present, we have not been apprised of the actual occurrence of abuse relating to these investment interests, and believe that their usefulness as instruments for inducing investors' referrals is more limited than equity investment interests.

The second standard (see paragraph (a)(1)(ii)) responds to the commenters' suggestions regarding public trading. We are adding a standard to this provision requiring the investment interest of an investor in a position to make or influence referrals to, furnish items and services to, or otherwise generate business for the entity to be obtained on terms equally available to the public through a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or through the National Association of Securities Dealers Automated Quotation (NASDAQ) system. We note that we specifically intend to preclude safe harbor protection for securities traded through the so-called "pink sheets" or those "non-NASDAQ" securities that are traded through the OTC Bulletin Board Service. See, Securities Exchange Act Release No. 34–27975, May 1, 1990. This standard follows our original intent to assure that the investment interests of physicians or others in a position to influence referrals must be obtained through the kind of arms length trading that is normally associated with actively traded public securities at the fair market value through a publicly regulated exchange. Such public trading assures that the entity does not obtain capital by self-selecting investors based on their status as sources of referrals.

Although we are not requiring investment interests of other investors to be obtained through public trading, physicians and others in a position to influence referrals must strictly comply with this standard. We plan to closely scrutinize attempts to circumvent this standard. For example, any investment interest obtained before an entity becomes publicly traded is not protected under this provision. In addition, an investor is not protected by exchanging a limited partnership interest for shares in a newly formed entity that is publicly traded. Further, this standard precludes protection of payments from securities where physicians are afforded the opportunity to buy the available shares of an entity before other members of the public have the opportunity to invest in that entity. Such an entity would have only physicians as investors, and it is not our intent to protect payments from such entities. We expect the public to be afforded a genuine opportunity to invest in these publicly traded entities. Where referring sources (or their immediate families) hold a large proportion of the shares, we will presume that this standard has not been met.

Comment: A number of commenters suggested that the OIG expand this provision in a variety of ways to protect remuneration from debt as well as equity instruments and from entities other than corporations, such as partnerships.

Response: As discussed above, this safe harbor protects debt as well as equity instruments. We recognize that an ambiguity existed in our proposed rule in that our 500 investor test applied only to "a class of equity security" and thus appeared to prohibit debt instruments from qualifying under this safe harbor provision. However, this ambiguity is resolved by eliminating the 500 investor test. In addition as discussed above, we are exempting debt instruments from the SEC registration requirement contained in the first standard.

We also agree that investments in partnerships should be protected, and we are revising this provision accordingly, by adding a definition of investment interest.

Comment: A few commenters expressed concern that entities meeting the requirements contained in the proposed safe harbor provision could still be engaging in abusive relationships with individuals in a position to make referrals. One commenter suggested that we specifically protect against fraudulent cross-referral arrangements whereby investors in entity "A" are explicitly or implicitly encouraged to refer to entity "B" in return for entity "A" receiving the referrals from the investors of entity "B."

Response: We agree with the thrust of these comments, and are adding three standards (see paragraphs (a)(1) (iii)–(v)) to clarify our original intent and assure that investment interests are not used as inducements for referrals. One, the entity or any investor must not market or furnish the entity's items or services to passive investors in any manner differently than to non-investors. In other words, although an entity may seek referrals or other business from passive investors, it must promote and furnish its items or services to investors and non-investors in the same manner. An entity may not use a separate marketing approach or provide a different level of service to passive investors as opposed to non-investors. For example, in its promotional efforts, the entity may not in any manner appeal to or refer to such investor's position as an investor, and in serving customers it may not offer special arrangements to investors that are not available or are offered on different terms to non-investors. Any distribution to passive investors of individual or aggregate investor referral patterns would also not be protected under this provision. In addition, the entity or any investor must not promote the items or services of other entities as part of a cross referral agreement. One type of cross referral arrangement we are not protecting is the sham transaction described in the above comment.

Two, the entity must not loan funds to or guarantee a loan for an investor to use for the purpose of obtaining the investment interest. We do not believe protection should be afforded where an investor is loaned money from the entity, or from a parent or subsidiary corporation (or is guaranteed a loan by the entity or a related organization), and the investor makes an investment based on that loan. In such a situation, the investor is adding no real capital to the entity. We note, however, that safe harbor protection is available where the investor borrows from other sources, such as from his or her broker or a bank.

And three, the amount of payment in return for the investment interest must be directly proportional to the amount of the capital investment. Such payments are consistent with the type of corporate dividend payment that we are trying to protect.

We believe that these minor revisions, which are fully consistent with our original intent, should offer reasonable protection against the possibility of significant abuses without unduly restricting the types of entities that may qualify under this provision.

b. *Small Entities.* In the notice of proposed rulemaking we solicited comments on expanding the proposed investment interest safe harbor to protect payments from investments in small entities, particularly limited and general partnership interests. For limited partnership interests we suggested four standards for protection: (1) A bona fide opportunity to invest is made on an equal basis without regard to the investor's ability to make referrals, (2) no requirement is imposed on the investor to make referrals, (3) disclosure is made to the referred patient, and (4) payments are not related to referrals. As conditions for protection of payments from investments in general partnership interests, we suggested that disclosure of the investment interest be made to a referred patient and payments not be related to referrals.

Comment: A large number of people commented that, in view of the OIG's interpretation of the statute as not prohibiting all referrals to entities in which a physician has an investment interest, safe harbor protection should be provided for legitimate arrangements. While some commenters suggested that the OIG adopt generic criteria for analyzing these arrangements, others commented more directly on the proposed standards we suggested in the proposed rule. A few commenters suggested that any safe harbor protections should treat indirect ownership interests held by family members in the same manner as direct ownership interests to assure that investors who make referrals to that entity do not circumvent the intent of these requirements by having investments held in the name of family members instead of their own names.

The enormous response to this invitation for comment reflected the polarization of the health care community on this issue. Those supporting safe harbor protection emphasized that physician-investor joint ventures promote competition, provide quality services, promote patient convenience, bring needed services to communities, are cost effective, do not lead to over-utilization, do not compromise ethics, and enable services to be provided outside hospitals and physician offices. Those urging no safe harbor protection or expressing a need for stringent safeguards argued that these joint ventures hurt competition, compromise quality of care, are not in patients' best interests, increase costs, lead to over-utilization, and create conflict of interests between health care providers and patients.

A large number of commenters generally supported safe harbor protection for payments to those with managing partnership interests and agreed with the OIG's two suggested conditions for protection. However, a few commenters opposed such protection. In addition, a few commenters suggested that the OIG define which individuals would be protected under this provision.

Response: Because of the significant business investment activity in these small entities—typically joint ventures—and the advantages of permitting them in certain situations, we believe that safe harbor protection is warranted. However, we have also observed widespread abuses in many of these joint ventures. In particular, we believe that a large number of these newly formed entities are designed to have physicians as investors specifically to induce them to use the entity in which they have invested. Therefore, any safe harbor protection must include significant safeguards to minimize any corrupting influence the investment interest may have on the physician-investor's decision where to refer a patient. We are including a second

investment interest provision (paragraph (a)(2)) that protects payments to investors who are limited and general partners, shareholders, or holders of debt securities where eight standards are met. We will discuss some of the definitional categories of persons who are protected under this provision, our response to comments recommending special protection for managing partnership interests, and our three categories that provide structure for the eight standards in this safe harbor.

We have classified "investors" as either "passive" or "active" because some of the standards apply only to those defined as "passive" investors. The definition of an "active" investor includes two categories of persons. The first category is modeled after a bona fide general partner in a partnership under the Uniform Partnership Act who is responsible for the day-to-day management of the entity.

We are including a second way to qualify as an "active" investor: the individual or entity must agree in writing to undertake the liability for the partnership, including the acts of its agents acting within the scope of their agency. We believe that such an affirmative act will assure that the individual or entity performs many of the same functions that general partners do who actively manage the day-to-day operations of the joint venture entity. For example, these active investors undertake the business risk that a typical general partner does, and will be interested in assuring that the day-to-day managers of the entity engage in sound business practices and not run afoul of the statute as well as other Federal and State laws and regulations.

"Passive" investors are those investors who are not active investors, such as limited partners in a partnership or shareholders in a corporation.

This second investment interest safe harbor provision includes some standards that must be met by both passive and active investors, and some standards that need only be met by passive investors, to the extent any exist in the joint venture. If an entity contains only active investors, the standards applicable only to passive investors would, of course, not apply. It must be emphasized, however, that the standards for this safe harbor must be met by all the investors in the entity. To the extent that one class of investors, such as active investors, qualifies, but the passive investors do not meet one of the standards, safe harbor protection is not given to payments to any investors in the entity.

In this regard, special attention must be paid to cases involving ownership interests held indirectly through other entities. Take a situation, for example, where a group of individuals are passive investors in entity "A", which in turn is the active investor in entity "B." For entity "B" to qualify under this safe harbor provision, entity "A" must meet all the requirements for active investor in entity "B," and the individual investors of entity "A" must meet all the requirements as passive investors in entity "B."

We believe that this provision will protect investment interests of those with managing partnership interests who establish limited partnerships that meet the standards of this provision. We have decided not to include a third investment interest provision at this time that would place fewer requirements on business structures composed entirely of active investors. We recognize that there are many legitimate small businesses structured in this manner where a group of individuals come together and all of them participate as hands-on managers in the day-to-day operations of the business and undertake personal liability for the entity. Historically, many hospitals were formed in this manner. And currently many group practices and other innovative health care delivery systems are being formed on a bona fide basis in this same manner. However, there are many new entities that have the same business structure, but that may be subject to abuse under the statute. Consequently, we have determined that it is inappropriate to implement a safe harbor provision at this time for entities composed exclusively of active investors that would not have to meet the standards we are implementing in this second investment interest provision. However, we are considering a new safe harbor provision for such investment interests which we anticipate publishing as a separate regulation.

The safe harbor provision we are including in this rule for investment interests in small entities was developed based on the standards we suggested in the proposed rule, the comments we received on our proposals and our continuing experience in enforcing the statute. This experience includes investigations of abusive joint venture arrangements, our Fraud Alert describing suspect features of these arrangements, and our Report to Congress entitled "Financial Arrangements Between Physicians and Health Care Businesses" (OIG, Office of Analysis and Inspections, May 1989). The Report to Congress disclosed in detail both the extensive ownership of joint ventures by physicians, and the additional services received by patients of these physicians as compared to all Medicare patients in general.

The standards for this provision are structured into three categories that we have identified as being of concern to us in joint venture arrangements: (1) The manner in which investors are selected and retained, (2) the nature of their business structure, and (3) the financing and profit distributions. To the extent possible, we have adopted bright line rules. We believe that this approach will facilitate compliance because investors will be able to determine easily whether they meet the conditions of safe harbor protection. As discussed in section III.A. above, we are not accepting commenters' suggestions for generic criteria. We believe that such criteria do not provide sufficient protection against abusive arrangements, nor do they provide meaningful guidance to delineate when a provider has complied with them.

The following discussion will be structured along the lines of the three problem areas we have identified.

(i) *Manner in which investors are selected and retained.* In this section we discuss the comments and our responses regarding the problem of the manner in which investors are selected and retained. The first five standards of this investment interest provision protecting small entities (paragraphs (a)(2)(i)–(v)) relate to this problem area.

Comment: The OIG received mixed comments on the first standard suggested in the proposed rule, that a bona fide opportunity to invest be provided on an equal basis to all investors without regard to their ability to make referrals. A large number of commenters expressed concern about the meaning and workability of this standard, particularly that it is vague and would be difficult to police. Several commenters construed this first suggested standard as a results-oriented test requirement, in other words, that joint ventures must be owned partly by individuals not in a position to make referrals. Some suggested that the OIG place a limit on the percentage of ownership of an entity that can be held by such referring investors. The percentages ranged from 5 percent to 85 percent ownership by referring investors. Others suggested that the OIG should not require these entities to have some amount of non-referring investors. One commenter specifically objected to a requirement that a joint venture have a majority of the ownership interests held by non-referring investors. Five commenters expressed concern that any

requirement that investment interests be offered to non-referring individuals may be construed as requiring a public offering, thus triggering the necessity of complying with SEC rules (such as Regulation D governing the limited offering and sale of securities without registration under the Securities Act of 1933, 17 CFR 230.501 *et seq.*) or State "blue sky" laws which require public securities registration.

Response: We agree with the concerns expressed by most of the commenters about our first suggested standard. Thus, we are replacing it with three standards (paragraphs (a)(2)(i)–(iii)) in order to better address problems concerning the manner in which investors are selected. To comply with our first standard, investors who make referrals or who are in a position to make referrals or furnish items or services cannot own more than 40 percent of the value of investment interests within each class of investments in the entity. This standard requires not only that a bona fide opportunity to invest has been afforded to people not in a position to make referrals, but that these individuals hold at least 60 percent of the value of the investment interests in each class of investments.

In essence, we are switching a process measure with an outcome measure. As several commenters observed, our proposed standard of equal opportunity to invest contemplated that an equal number of referring and non-referring individuals would be given an opportunity to invest. Such a process-orientated test would have been virtually impossible to monitor. For example, such a standard would have required a joint venture to monitor all marketing solicitations, and determine the referral status of everyone who was solicited to make sure that an equal number of referring and non-referring potential investors were given the opportunity to invest. The alternative outcome measure we are adopting will provide a bright line test which will assist all the parties to the joint venture and the Department in determining whether compliance with this first standard has been achieved.

Although compliance with this "60–40 percent investment" standard will necessitate some monitoring data, we want to minimize the burden. Therefore, the joint venture is free to use any internal accounting principles it chooses to adopt so long as it uses such principles consistently over time so that it is not manipulating the data to obscure its noncompliance. In addition, we are establishing two alternative time periods in which compliance is to be measured. The measurement period can either be a joint venture's prior fiscal year or the previous 12 month period. For example, if a joint venture uses a calendar year as its fiscal year and wants to know in April 1990 whether it is in compliance with this standard, it may either look at the number and status of investors in 1989, or it may use its investor data from March 1989 through March 1990.

We expect that the parties to a joint venture will find it far preferable to use its prior fiscal year data because if that year's data shows compliance with this standard then the joint venture is in compliance for the entire current fiscal year. The alternative approach of a rolling 12 month average will enable a joint venture to reach compliance sometime within the current fiscal year so that it does not have to remain out of compliance for a full year. However, we also recognize that a joint venture using this rolling 12 month average that is being operated close to this 40 percent line may find itself in compliance one month and then out of compliance the next month. We emphasize that it is highly unlikely we will pursue an investigation of a joint venture where it complies with all the other standards in this safe harbor, is out of compliance with this 60–40 percent investment standard based on its prior fiscal year data, but is making a good-faith effort to reach compliance with this standard based on data showing compliance on a monthly basis for the most recent months of operation.

As previously discussed, for the purposes of complying with this 60–40 percent investment standard, we are classifying investors who provide items and services together with investors who make or influence referrals to the entity. This classification is necessary to preclude a supplier, such as a DME company, from forming a joint venture with referring physicians, giving them a 39 percent interest in the entity. It would be inappropriate to grant safe harbor protection to such an entity because all of the owners would be doing business with the joint venture by either furnishing items or making referrals. In order to remedy this problem, the DME supplier is classified with the referring physicians for the purposes of this 60–40 percent investment standard. Thus, for example, if a DME supplier and its referral sources want to be investors in an entity with which they will do business, to comply with this first standard, at least 60 percent of the value of the investment interests must be held by investors who will neither make referrals nor engage in business activity with the entity.

The second and third standards of this provision address the problems of discriminatory marketing strategies that result in the offer of better deals, for example, more shares or a better price, to individuals who will refer a high volume of patients. The second standard focuses on the *status* of investor and bars safe harbor protection where the terms of investment opportunities depend on whether a passive investor is in a position to influence referrals, furnish items or services, or otherwise generate business for the entity. The entity can offer investments to such investors only on the same terms as those offered to other passive investors not in a position to influence the flow of business to the entity. We are not imposing this standard on active investors because we recognize that it is precisely because of a physician's familiarity with the health care field that he or she may be chosen as a general partner and offered different investment terms from those offered to passive investors.

The third standard assumes that an investment interest is being offered to a person in a position to make referrals, but bars the offering of favorable terms based on his or her past or expected referrals or amount of business otherwise generated for the entity. This standard applies both to active and passive investors because we believe it is inappropriate to protect all investment interests where any investor, even general partners, can obtain more shares because they can be expected to generate more business for the entity. We recognize that there may be situations where it is not abusive to offer more shares based on this consideration, but we also believe that such a practice can have a serious potential for abuse.

With respect to the potential triggering of a public registration requirement under SEC rules or State "blue sky" laws, we believe that there is nothing in this provision that would compel such a result. Thus, we see no need to modify this provision.

Comment: In response to the OIG's proposal that no requirement be imposed on the investor to make referrals, many comments dealt with the issue of how investors are retained. Specifically, many commenters objected to requirements, which entities commonly place on investors, that investors must divest their interest if they no longer are able to make referrals to that entity. One commenter suggested that the OIG prohibit entities from

distributing any information to investors about their referral patterns to that entity.

Response: We generally agree with these comments and have addressed them in the fourth and fifth standards of this safe harbor provision. (Paragraphs (a) (2) (iv) and (v)). The fourth standard bars the entity from requiring passive investors to make referrals or remain in a position to make referrals as a condition for retaining their investment. The fifth standard parallels the new standard for publicly traded entities and requires the entity and investors not to market or furnish items or services to passive investors in any manner differently than to non-investors. Some examples of practices that would not be protected are provided in the discussion above on the parallel provision for publicly traded entities. These two standards apply only to passive investors because, as we stated, we recognize that active investors are often sought out because they will help generate business for the joint venture.

This fifth standard also requires the entity and any investor not to promote the services of other entities as part of a cross referral agreement. As we noted in the previous section on publicly traded entities, an example of a cross referral arrangement that would not comply with this standard exists when investors in entity "A" are explicitly or implicitly encouraged to refer to entity "B" in return for entity "A" receiving the referrals from the investors of entity "B."

Comment: A large number of commenters supported the OIG's third proposal that disclosure of the investment interest be made to individuals for which a referral is made. However, some were opposed to such a requirement.

Response: For the reasons discussed in section III.B.2. above, we decline to adopt a disclosure requirement.

(ii) *Business structure.* In this section we discuss the comments and our responses regarding the problem of the nature of the business structure of joint ventures. The sixth standard (paragraph (a)(2)(vi)) relates to this problem area.

Comment: The OIG received a large number of comments relating to the business structure of joint ventures, and particularly on the problem that many abusive joint ventures exist primarily on the referrals from their investors. Many of these commenters alleged that such joint ventures are unable to compete for business in the open market on the basis of cost, quality and convenience. These commenters alleged that such joint ventures thereby hurt competition by unfairly "locking in" referrals from investors. However, one trade association reported from a survey of its members that, on average, 47 percent of the referrals to entities operated by its members came from non-investors. Many commenters also expressed concern that abusive joint ventures have no real business purpose, and that the four standards we suggested will not prevent abuse. Four commenters suggested that safe harbor protection be provided where the costs to Medicare and Medicaid are not increased. One commenter observed that, in many cases, the apparent lower costs of joint ventures are illusory because their hours of operation are shorter than those of hospitals. To assure that joint ventures do not raise costs or operate in an abusive manner, a large number of commenters suggested that the OIG require utilization review.

Response: We agree with the concern that entities protected under this safe harbor provision should not exist by relying on their business coming from referrals from investing physicians. In our experience, a large number of joint ventures are formed with the intent to encourage investors to refer patients to the joint venture. In many cases, the referrals from investing physicians dominate the joint venture's business so that it is does not have to compete for outside business and that it cannot survive without such referrals from its investing physicians. At that point, the business purpose of the joint venture becomes suspect.

We also agree with commenters who believed that the standards we suggested in the proposed rule will not sufficiently protect against abuse. Although some protection is afforded by the fifth standard we are promulgating which is discussed immediately above (that the entity may not treat a passive investor differently than non-investors), we believe that an additional bright line rule is necessary as a condition of safe harbor protection.

Therefore, the sixth standard in this provision requires that no more than 40 percent of an entity's gross revenue comes from referrals from, or items or services furnished by, investors. This "60–40 percent revenue" standard is reasonable, and, at least according to one commenter's survey of its members, appears to be achievable for many joint ventures.

This standard, as well as the first standard in this safe harbor provision, provide clear rules which assure that no protection is afforded to joint ventures that operate primarily on the referrals of physician investors. By requiring that no more than 40 percent of the joint venture's revenue come from investors' referrals, we help assure that revenues of these joint ventures come from a wider group than referrals from physician investors. And by limiting the number of investors who make referrals, we help assure that the profits from these entities are distributed to a wider group than referring physician investors. Thus, these two standards will help assure that joint ventures are not dependent on the capital and referrals of physician-investors.

As part of the Department's program to monitor business arrangements' compliance with these safe harbor provisions (see section III.A. above), we will report to the Secretary on the compliance with these two 60–40 rules (see § 1001.953). This report, which will be issued within 180 days of the publication of this rule, will evaluate whether compliance with these two 60–40 rules adequately controls abusive arrangements or whether more stringent requirements are needed.

As with the first 60–40 percent standard, we are permitting a joint venture to use any internal accounting principles it chooses to adopt so long as it uses such principles consistently over time so that it is not manipulating the data to obscure its non-compliance. In addition, we are establishing the same two alternative time periods in which compliance is to be measured. The measurement period can either be a joint venture's prior fiscal year or the previous 12 month period. Again, as with the first 60–40 percent standard, it is highly unlikely we will pursue an investigation of a joint venture where it complies with all the other standards in this safe harbor, is out of compliance with this 60–40 percent standard based on its prior fiscal year data, but is making a good-faith effort to reach compliance with this standard based on data showing compliance on a monthly basis for the most recent months of operation.

As noted above in the discussion of our definition of the term "investor," in applying these two 60–40 rules in situations where the joint venture entity is owned by other entities, we will examine the ownership structure of these other entities to determine whether they are owned by physicians who are referring to the joint venture entity. In such a situation, these physicians are considered to be investors of the joint venture entity, and their ownership interest must be offset by non-referring owners and the revenue they generate for the joint venture must be offset by referrals from non-investors.

We believe the suggestion that we require protected joint ventures to provide services at lower costs to Medicare and Medicaid is unworkable. Although such a feature is obviously a desirable goal, we believe that any analysis of the relative costs of services can only be accomplished meaningfully on a case-by-case basis. Examples of some of the areas such an analysis must examine include: (1) The reimbursement methodology of the service, (2) the patient population being served, (3) the hours of operation, (4) the bad debt and free care policies, and (5) the impact on costs and charges of depreciation of new equipment. These factors must be analyzed for both the joint venture entity and other competing entities to which a comparison is being drawn.

We believe that utilization review should be encouraged. However, there are many variables that distinguish a successful utilization review program from a sham. For example, utilization review may be conducted under contract by a Peer Review Organization or another independent contractor, or it may be conducted in-house. A critical feature of utilization review is that follow-up or corrective action occurs when a determination is made that a particular practitioner who is under review is engaging in aberrant or substandard behavior. Obviously this action can take many forms, ranging from barring the practitioner from further practice to taking no action at all. Because there are so many variables to an effective utilization review program, we believe it would be overly prescriptive and largely unproductive to impose such a requirement. Thus, we decline to include a utilization review requirement as part of this safe harbor.

(iii) *Financing and profit distributions.* In this section we discuss the comments and our responses regarding the problem of the financing and profit distribution of joint ventures. The last two standards (paragraphs (a)(2) (vii) and (viii)) relate to this problem area.

Comment: As discussed above, a large number of commenters argued that physician involvement in joint ventures is necessary because physicians provide needed capital. Several commenters, however, questioned whether investors are really generating capital for the joint ventures in which they invest. Many suggested that the OIG only protect an investor's capital in cases where the capital was genuinely at risk. In other words, if the investor's interest is obtained through a no-interest loan paid off through deductions from future dividend distributions, there was never really any capital placed in risk. Some suggested that the OIG protect investment interests even where the entity loans the investor funds which are then used to make the capital investment. One commenter reported results from a survey of its members that, on average, 60 percent of the investment from referring physician owners came in the form on non-cash investments (including debt guarantees).

Response: We agree that a new condition of safe harbor protection is needed to assure that the investments are bona fide, i.e., that investors' funds are genuinely at risk. Thus, the seventh standard of this provision parallels the new standard for the provision dealing with investments in large publicly traded entities: These entities cannot lend the funds or guarantee loans used to make the investment. Consistent with our first investment interest provision, other debt relationships are permitted. For example, the entity may borrow from the investor, and investors may borrow from other sources to obtain funds to use for the capital investment. But as we discussed above, where investors make their investment with money loaned from the entity, they are adding no real capital to it. Thus, this standard will help assure that physicians and other investors in fact provide new needed capital and that the joint venture is not in reality a sham to facilitate the distribution of payments for referrals.

Comment: The OIG received a large number of comments suggesting other protections to assure non-abusive financing arrangements and, in particular, urging the OIG to protect "nominal" investments. Many suggested that the OIG specify an upper limit on the amount an individual may invest, either in terms of a dollar amount or a percentage interest in the entity. Some specifically suggested a 5 percent limit. Three commenters took another approach and suggested a minimum capitalization amount, pointing out that many of the more abusive arrangements have minimal capital needs.

Response: We believe that individuals with a small investment in an entity may be just as likely as those with a large investment stake to be influenced to make referrals to the entity. Many of the more abusive joint venture arrangements of which we are aware offer only nominal investments to physicians. We believe that, in many cases, these nominal investment interests are designed to induce referrals or encourage the investor to otherwise generate business for the entity. In addition, by distributing the benefits of ownership to as wide a base of physician investors as possible, these joint ventures seek to lock-up their market, and thus operate in an insulated business environment largely free from normal competitive pressures such as pricing constraints.

We believe that it is not useful to impose a minimum capitalization requirement. Because each joint venture has different capital needs, it is not possible to specify one level of capitalization that would represent a reasonable floor for all joint ventures. For example, requiring at least $500,000 in capitalization would obviously be viewed very differently by a laboratory joint venture than by a magnetic resonance imaging joint venture. We do believe, however, that it is useful to analyze joint ventures on a case-by-case basis to determine what the real capital needs of the project are, and whether the capital that has been invested is merely a sham to pay investors for referrals.

Comment: We received a large number of comments on one of the standards suggested in the preamble to the proposed rule, that payments not be related to referrals. We also received other comments relating to the general problem of the manner in which profits are distributed. Many commenters suggested that the OIG limit the return on investment which will be subject to protection. Some suggested merely that the return be "reasonable," while another commenter stressed that there is no realistic way to determine an appropriate cut-off for a return on investment that would still be classified as "reasonable." One commenter suggested that, because there is less potential for abuse with repayments on debt instruments, the OIG should treat these payments differently from profit distributions.

Response: The eighth standard in this provision is that the amount of payment to each investor must be directly proportional to his or her capital investment. In other words, to receive protection, dividend payments can only be tied to the number of shares owned by an investor, and not to his or her referrals. Where investors, such as general partners, contribute capital in the form of pre-operational services or sweat equity, their dividend payments may reflect the fair market value of those services rendered.

This standard in no way protects payments to active investors for operational services they provide to the joint venture. By its very terms, this provision only protects payments that represent a return on investment. Safe harbor protection for the personal

services that an active investor renders would be governed by the "personal services and management contracts" provisions (paragraph (d)).

With respect to limiting the return on investment, we believe that it would be arbitrary to specify a limitation applicable for all joint ventures, and that it would be meaningless to merely specify as a general criterion that the return "be reasonable." As many commenters pointed out, a reasonable return can be appropriately measured only in light of the risk of the investment. An investor would surely expect a much higher return from an investment in an expensive piece of diagnostic equipment that might soon become obsolete than from an investment in a relatively inexpensive piece of equipment that can be expected to generate a steady profit stream for the foreseeable future.

With respect to repayments on debt instruments, we believe that it is unnecessary to create a separate provision for debt instruments, but, as discussed in section III.C.1.a. above, this provision is written to protect a variety of payments in securities, including debt instruments.

c. Proposals for New Safe Harbor Provisions

A large number of comments were received urging the OIG to provide special protection for investments in certain special circumstances which would not qualify under the safe harbor provisions suggested in the proposed rule.

Note: Any discussion below indicating that we are considering a new safe harbor provision should in no way be construed as legalizing the business arrangement at this time.

Comment: A large majority of these commenters requested protection for ambulatory surgical centers (ASCs). Many of these commenters believed that the OIG was attempting to eliminate ASCs. In presenting the benefits of ASCs, these commenters made many of the same arguments discussed in section III.C1.b. above, regarding the positive features of joint ventures in general. In addition, many commenters emphasized the unique features of ASCs: (1) They are subject to peer review; (2) they provide services at lower prices than hospitals; (3) they were formed to a very large extent by physicians, and (4) in many cases, they are really an extension of a physician's practice. Several other commenters suggested protection for payments from other types of entities based on a rationale similar to this latter "extension of practice ' argument. For example, commenters wanted protection for physicians providing inpatient services for their patients, nephrologists performing services at renal dialysis facilities, pathologists examining test results in laboratories, and radiation therapy oncologists performing radiation therapy services at outpatient centers.

Response: We understand that a special situation may exist when a physician sees a patient in his or her office, makes a referral to an entity in which he or she has an ownership interest and performs the service for which the referral is made. In such a situation, Medicare makes payment to the facility for the service it furnishes, which may result in a profit distribution to the physician. And the physician may also receive reimbursement from the program for performing the professional service.

We believe that, with respect to the physician's own fee, such a referral is simply a referral to oneself. It should not matter whether the patient is first seen at the office or at the facility. Consequently, we believe that, in this situation, both the professional service fee and the profit distribution from the associated facility fee that are generated from this referral may warrant protection. However, we remain concerned about the investing physician's ability to profit from any diagnostic testing that is generated from the services he or she performs. We are also concerned about the extent to which we should modify this second investment interest safe harbor to protect a physician-investor's profit in other joint venture entities where he or she both makes a referral and performs some level of service for the referred patient at the entity. Therefore, we are considering a safe harbor provision, that we anticipate publishing as a separate regulation to protect these payments where there is no likelihood of abuse.

We believe that a broader exemption at this time for payments from ASCs and similar entities is not appropriate. We recognize that many of these entities, and ASCs in particular, have operated under the Medicare and Medicaid programs largely without abuse and have saved these programs money when compared to some alternative treatment settings, particularly inpatient hospital care. We also recognize that one of the fundamental purposes of the statute is to prevent abusive business arrangements that increase cost to the Medicare and Medicaid programs. However, our approach is one of providing standards that define categories of business arrangements and business practices that will be given safe harbor protection. Our approach is not one of providing protection to particular categories of health care providers who earn it by being lawful or cost-effective.

We remain concerned about the widespread apprehension expressed by those commenters with an ownership interest in ASCs. Many commenters did not understand that the investment interest safe harbor provisions upon which we invited comment would protect many of the situations about which the commenters claimed no protection was being offered. In addition, as we made clear in section III.A. above, when an investment interest does not qualify under one of the safe harbor provisions, it does not mean that prosecution is imminent. The business arrangement may not even violate the statute, or, after examination on a case-by-case basis, we may conclude that prosecution is not warranted. Our disinclination to provide blanket protection for all investment interests in ASCs does not mean that we hold them in disfavor.

2. Space and Equipment Rental and Personal Services and Management Contracts—§§ 1001.952 (b), (c), and (d)

Comment: An overwhelming number of commenters criticized the restrictive definition of fair market value in the safe harbor provision for space rental. Many expressed concern that the safe harbor does not exempt rental payments that take into account added value attributable to a rental property's intended use as a facility for furnishing medical, laboratory, or other health services. Some were disappointed that this safe harbor provision does not appear to allow adjustments in rental charges for special construction or renovation costs incurred by the lessor to make the space suitable for furnishing medical services. Other commenters argued that the added value to providers of locating in a building or area proximate and convenient to other health care providers is a legitimate factor in calculating rent and may bear no relationship to prospective referrals of Medicare or Medicaid program business. They contended that the close proximity of rental property to other health care providers justifies elevated rent because both providers and their patients view such location as a convenience.

Response: The safe harbor provision for space rental does not contemplate a single figure for fair market value. Rather, it contemplates a rental fee falling within a reasonable commercial range, but not taking into account any value attached by either party based upon the property's proximity or

convenience to referral sources. To the extent there is a nexus between the location of property and the opportunity to engage in business reimbursable under Medicare or Medicaid, rental charges that take location into account may impermissibly generate referrals or other health care business. For example, we believe that a fair inference may be drawn that impermissible payments are being made when a group of doctors owns a medical arts building and rents space in that building to a diagnostic laboratory, and the rent is substantially above the laboratory' s cost of renting the same sized space at a nearby location.

Consequently, we decline to extend safe harbor protection to space rental charges that take into account any value attached to property due to the proximity of referral sources. We have modified the definition of fair market value in this provision to clarify that protection does not extend to rental charges reflecting the value attributed by either party to the proximity or convenience of property to potential sources of referrals or other business from the other party. However, we would note that where the lessor is a real estate developer or other entity not involved in the delivery of health care services, any arrangements that encourage referrals between the lessee and other third parties would not likely be scrutinized by the OIG.

However, we recognize that there may be instances where rental fees for medical, laboratory or other health related office space are justifiably higher than the market price for comparable commercial property. For example, we agree with commenters who stated that the cost of leasehold improvements needed to make space suitable for the furnishing of medical services (such as extra plumbing or electrical costs) should be considered within the provision's definition of fair market value. Accordingly, we have further amended this safe harbor's definition of fair market value to delete the requirement that fair market value not take into account the intended use of rental space. However, we have retained the requirement that rental payments be commensurate with the fair market value of equivalent commercial property, and decline to extend blanket safe harbor protection to rental arrangements that reflect the added value a hospital places on having referring physicians located in a medical building the hospital owns on its property. We recognize that this requirement will preclude safe harbor protection for many health care providers who lease space to physicians or suppliers at a reduced rate due to the favorable location of the property. In particular, hospitals that give rent concessions to staff physicians leasing private office space may not fall within the safe harbor. For a discussion of how such payments may qualify as part of a physician recruitment effort, see section III.D. below.

Comment: A few commenters inquired whether rental arrangements involving both the use of office space and the furnishing of personal or management services must meet the requirements of both safe harbor provisions in order to be protected from liability under the statute.

Response: In section III.A. above, we addressed generally the circumstances under which the requirements of two relevant safe harbor provisions must be met in order to be protected under this regulation. However, because several commenters specifically requested guidance about contracts involving the rental of space and the furnishing of personal services, we are responding to their comments here.

To the extent that office rental payments include the value of other personal services furnished as part of a business arrangement, the payments must reflect the fair market value of the rent and these personal services in order to qualify under the safe harbor regulation. To be exempt from kickback liability, arrangements involving remuneration for rental and personal services must meet the conditions of each provision. For example, where a mobile business provides diagnostic services to patients in physicians' offices, and contracts for diagnostic equipment or for cleaning, billing or other services in addition to renting office space from these physicians, the arrangement must qualify under the provisions for space and equipment rental and personal services and management contracts.

Comment: Several commenters, expressing support for a strong and effective anti-kickback statute, stated that sham office leases in which the space is not actually used are among the most common and abusive kickback schemes. Examples of such abusive schemes cited by commenters included physicians who entered into office rental contracts with other referring physicians, solely in order to obtain the referrals, and diagnostic services companies and clinical laboratories that lease space from physicians which the laboratories in reality do not use, as kickbacks for the physicians' patient referrals.

Response: We agree that sham contracts in which remuneration is exchanged for property that does not exist or space which is not used are among the most egregious kickback arrangements. We have become aware of office rental arrangements in which the "space" rented may not be large enough or otherwise suitable to perform any services for which rent could legitimately be paid. For example, a physician may rent office space to a clinical laboratory, allegedly in order to provide space to furnish laboratory services, when the space (often a closet or anteroom not useable for such purposes) is not actually occupied by laboratory personnel at any time. If the physician refers most or all laboratory work to this lessee, the "rent" is simply remuneration for referring laboratory work.

We believe, however, that these safe harbor provisions are sufficient to protect against this abuse. These provisions require that the amount of payments for rent, equipment or personal services contracts not take into account the volume or value of referrals or other business generated between the parties. If a sham contract is entered into, which on paper looks like it complies with these provisions, but where there is no intent to have the space or equipment used or the services provided, then clearly we will look behind the contract and find that in reality payments are based on referrals. Thus, these contracts would not be protected under these provisions.

Comment: Two commenters stated that the safe harbor requirements for determining fair market value of rental space should be the same requirements of section 501(c)(3) of title 26 of the United States Code, the Internal Revenue Code section governing tax exemptions for nonprofit institutions. Under this section, fair market value assessments are necessary to determine whether hospital/physician arrangements result in the prohibited inurement of private benefit to individuals.

Response: We do not believe that procedures for assessing the fair market value of hospital/physician arrangements under the Internal Revenue Code are relevant to safe harbor requirements under the anti-kickback statute. The anti-kickback statute is concerned with prohibiting fraud and abuse by individuals and entities participating in the Medicare and Medicaid programs; a statute providing tax exemptions to nonprofit institutions under specified conditions does not share this focus. The

requirements we have set forth for determining fair market value under the safe harbor regulation are not undermined by the fact that they do not replicate the requirements under the Internal Revenue Code. Moreover, we cannot see, nor has any commenter adequately explained, how these regulations impede health care providers' ability to obtain tax exempt status under the Internal Revenue Code.

Comment: Commenters requested clarification as to whether these safe harbor provisions protect any types of percentage, "per use" or "per procedure" leases or contracts in which the amount of compensation fluctuates in accordance with the actual use of premises or equipment, or the frequency of services performed. A few commenters inquired whether percentage leases between parties in a position to refer Medicare or Medicaid business were a *per se* violation of the statute. Many commenters urged the OIG to extend safe harbor protection to per use equipment leases, and to percentage contracts for personal services, in which total business, in contrast to referral business, is the basis for payment. With regard to equipment leases, several commenters argued that these provisions should protect equipment lessors who receive higher rent based on increased use, because the useful life and value of equipment depreciates with use.

Response: As we explained in section III.A. above, in discussing wear and tear clauses, percentage or per use agreements between health care providers in a position to refer Medicare or Medicaid business threaten to violate the statute because the payments in these arrangements are directly tied to the volume of business or amount of revenue generated, providing an improper incentive to refer. Moreover, historically, percentage leases and contracts have been rife with abuse.

These sorts of arrangements need to be examined on a case-by-case basis. For example, a lease to a hospital of major medical equipment, such as a magnetic resonance imaging scanner, may specify that higher rent is to be paid when more than a predetermined number of procedures is performed. Such an arrangement can be troublesome if the lessor is a partnership of radiologists on the hospital's medical staff, because the incentive for overutilization is clear. It is the nature of the relationship, if any, between overall volume of use and referrals, that triggers the statute. Thus, if the owner of equipment were not in a position to make referrals to the lessee, the agreement would not violate the statute.

For these reasons, we specifically decline to protect rental charges or compensation for personal services where the aggregate amounts of payments are not set out in advance. This does not mean, however, that percentage or per use leases and contracts that are based on overall volume (including business from referral sources with no financial interest to motivate them), are *per se* violations of the statute. We recognize that legitimate considerations, such as the depreciation of equipment, could result in some part of the payment to be based on a percentage or "per use" payment arrangement without these payments influencing or being influenced by Medicare or Medicaid referrals. However, the more the payments appear to reflect the volume of referrals from the financially-interested party, the more suspect the arrangement becomes and the more likely we will need to examine it carefully.

Comment: Many commenters were opposed to the condition that space and equipment leases and personal services and management contracts run for periods of not less than one year. They argued that the one year condition was superfluous, given additional restrictions relating to fair market value and referral relationships between the parties. They also argued that the one year rule would preclude many legitimate short-term arrangements, such as leases of state-of-the-art imaging equipment by health care providers who could not afford a full year's lease. Some health care providers claimed that the rule would cause them to forsake good business judgment in order to obtain needed equipment or services.

Commenters were most concerned about the one year requirement in the context of personal services and management contracts. Several commenters argued that many professional services typically contracted for by health care providers, from medical or surgical consulting services to peer review functions, involve projects or activities that require less than one year to complete. They argued that it is inefficient and wasteful for health care providers to enter into contracts for periods of one year under these circumstances. Additionally, a few commenters sought clarification as to the effect of the one year rule on leases terminated for cause prior to the expiration of a contract extending one year or longer. In particular, there was concern that the conditions of the space rental safe harbor not conflict with Internal Revenue Service guidelines governing advance determinations of tax exempt status. These guidelines require tax exempt facilities to be able to terminate, within 90 days notice, contracts with non-exempt persons where compensation is based on fees charged for services furnished by the non-exempt persons.

Response: We have retained the one year contract requirement as a condition for safe harbor protection under the space rental, equipment rental, and personal services and management contracts safe harbor provisions. We included the one year rule limitation in these provisions because we are concerned about abuse resulting from periodic renegotiation of ostensibly short term agreements, in response to changes in referral patterns. For example, if a health care provider rents office space to another individual or entity with whom he or she is in an ongoing referral relationship, and these providers alter their rental terms with frequency, the volume or value of referrals can influence the size of renegotiated rental payments. When rental charges are constantly subject to modification, the threat to the lessor of receiving reduced rent, or the threat to the lessee of paying higher rent, may improperly induce increased referrals. However, we recognize that health care providers may enter into short-term leases or services contracts for legitimate business reasons and not on account of referral opportunities. For example, an academic physician who spends one semester or school year visiting at another medical university may need to rent office space from the medical university for less than a year.

Several commenters expressed concern that contracts for the performance of activities or services that, by their very nature, take less than one year, would necessarily fall outside the safe harbor provision for personal services and management contracts. However, the one year contract requirement restricts the period within which contract terms may not be changed, and not the time within which services under a contract may be performed. So long as contract terms are not altered within a one year period, an agreement that is performed in less than one year's time will meet the one year requirement in the safe harbor provision.

With regard to the comments we received concerning early termination clauses in leases or contracts extending not less than one year, we acknowledge the customary use of such provisions for tax and other legitimate business

purposes. The legitimacy of an early termination clause in a lease or contract which otherwise meets the conditions of these three provisions depends on the parties' intent. Termination "for cause" clauses drafted in compliance with Internal Revenue Service or other legal or regulatory requirements should not jeopardize safe harbor status, if the purpose of the termination clause is to comply with those requirements, and not to facilitate renegotiation of contract terms. If a contract is terminated in accordance with a legally enforceable termination clause, the failure to renew the contract would provide evidence that the termination was effectuated for a legitimate purpose.

Comment: The safe harbor provisions governing space and equipment rental and personal services and management contracts provide that when the property or service is to be provided on a periodic, sporadic or part-time basis, the agreement must specify precisely the timing and duration of rental periods and compensation charged for each period. Numerous commenters were troubled by these requirements. They argued that furnishing professional services and leasing space and equipment on an "as needed" basis are commercially acceptable, cost-effective business practices that should be protected so long as the rate of compensation is commercially reasonable. They also stated that under many periodic lease and contract arrangements, precise intervals of activity or use, and the exact compensation for these intervals, cannot feasibly be specified in advance. In addition, there was concern that requiring specificity of time intervals and compensation as conditions for safe harbor protection would interfere with the flexibility necessary to accommodate changing demand, and would increase costs in situations where the demand proved lower than expected at the time the contract was made. Finally, a few commenters asked for clarification of the meaning of the word "periodicity" in these three provisions when the space or equipment lease or personal services agreement is not on a full-time basis.

Response: Part-time contractual arrangements and periodic access leases between health care providers are especially vulnerable to abuse because they are subject to modification based on changing referral patterns between the parties. For example, an optometrist who pays *ad hoc* "rent" to an ophthalmologist for the time spent in the physician's office examining only referred patients, is impermissibly paying for the referrals. In order to avoid the potential for abuse inherent in part-time business arrangements between parties in actual or potential referral relationships, we have limited safe harbor protection under these three provisions to periodic leases and contracts which set forth the timing, frequency, and length of services or intervals of use.

We recognize that health care providers, for various reasons, may be unable to specify the timing or duration of business arrangements, or the precise compensation involved. For example, compensation under a management contract requiring the furnishing of supplies and the hiring of personnel may need to vary depending on the costs of the supplies and number of personnel. Or, a health care provider may contract with an allied health practitioner group (such as a physical therapy group) to pay a specific amount per hour of care provided, without being able to anticipate the scheduling of services in advance. We believe that part-time leases or service arrangements that do not meet safe harbor standards need to be analyzed on a case-by-case basis under the statute. Many periodic contracts of this sort would fall outside the statute because the compensation involved is not linked to referral opportunities. A contract to serve as medical director of a small clinic on a part-time basis, for example, is not likely to involve activities or compensation tied to the referral of patients or to arrangement for services reimbursable under Medicare or Medicaid programs.

Finally, we are deleting the word "periodicity" from these three provisions because it duplicates the requirements that the rental or equipment lease or personal services agreement specify the schedule of intervals, their precise length, and payments for the intervals.

Comment: Three commenters requested the OIG to protect marketing and advertising activities because such activities either promote competition or do not violate the statute.

Response: The statute on its face prohibits the offering or acceptance of remuneration, *inter alia*, for the purposes of "arranging for or recommending purchasing, leasing, or ordering any. . . service or item" payable under Medicare or Medicaid. Thus, we believe that many marketing and advertising activities may involve at least technical violations of the statute. We, of course, recognize that many of these advertising and marketing activities do not warrant prosecution in part because (1) they are passive in nature, i.e., the activities do not involve direct contact with program beneficiaries, or (2) the individual or entity involved in these promotions is not involved in the delivery of health care. Such individuals or entities are not in a position of public trust in the same manner as physicians or other health care professionals who recommend or order products and services for their patients. Thus, we agree that many advertising and marketing activities warrant safe harbor protection under the personal services and management contracts safe harbor.

However, we have experienced many instances where promoters and consultants have become involved in marketing activities that encourage health care providers and others to violate the statute, such as to develop impermissible joint venture arrangements or to routinely waive coinsurance and deductible amounts owed under Medicare Part B. It would be inappropriate to allow such activities to receive safe harbor protection.

Thus, we are adding paragraph (d)(6) to this safe harbor provision to make clear that the service that is contracted for is not protected if it involves the counselling or promotion of a business arrangement or other activity which itself constitutes a violation of any State or Federal law. However, the safe harbor (revised as indicated) protects contracts where the individual paid under the contract counsels or promotes business arrangements or other activities that are either specifically exempted under one of the provisions of this regulation or otherwise do not violate the statute.

Comment: Four commenters sought specific protection for commission sales arrangements between health care providers and independent contractors.

Response: We see no reason, nor has any commenter claimed to have provided one, for treating commission sales agreements differently under these regulations from other types of contracts for personal services performed by independent contractors. Therefore, commission sales agreements must meet the conditions of the safe harbor provisions governing personal services and management contracts.

3. Sale of Practice—§ 1001.952(e)

Comment: While many commenters supported the one-year limitation on the completion of a sale of a practice, others believed that it is too short. One commenter asserted that such a limitation would effectively ban option

agreements on sales of physicians' practices.

Response: We decline to protect option agreements or sales which extend beyond one year because, as we stated in the preamble to the proposed rule, we believe that this is an area of significant abuse. Often, sales and option agreements are designed solely to ensure referrals, and payments for the sale or option agreement are actually payments for referrals. The one-year limit serves to protect sales where the sale occurs because the physician is no longer going to be practicing and not because the purchaser seeks an ongoing stream of referrals. To the extent that one can enter into an option agreement, exercise that option and complete the purchase of the practice within one year from the date the option agreement is entered into, this aspect of the transaction will fall within this safe harbor provision.

Many commenters appeared confused about whether the provision requires payments from the sale to be completed within one year. This provision does not preclude a purchaser from making payments to a practitioner beyond the one-year period as long as the other conditions of this provision have been met.

Comment: Many commenters strongly supported the one-year grace period from the date of a purchase agreement to complete the purchase, and during which time referrals would be permissible. One commenter believed this period should be shortened to six months, but others stated that it should be longer than one year.

Response: We were presented with no persuasive reason to extend or shorten this one-year period and we therefore decline to revise this limitation period.

Comment: Several hospitals requested protection for their purchases of the practices of retiring physicians.

Response: When a hospital purchases a physician's practice and thereafter there are no referrals from that physician to the hospital, the statute would not appear to be implicated. Accordingly, in ordinary circumstances, a hospital is not in violation of the statute if it purchases the practice of a retiring physician who no longer makes referrals to that hospital.

However, many hospitals engage in this practice as part of a physician recruitment effort. Such activities do implicate the statute, but we are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, to protect many such recruitment activities.

Comment: Several hospitals requested that their practice of buying physicians' practices for fair market value and then retaining the physicians on staff be afforded the protection of a safe harbor. They asserted that the financial pressures of maintaining private practices have drawn physicians to hospitals in order to get management assistance and capital.

Response: As we stated in the preamble of the proposed rule, hospitals often purchase physicians' practices in order to ensure the hospital of a steady stream of referrals. We continue to believe that such practices lead to increased program costs and potential conflicts between the patient's best interests and the physician's business relationship to the hospital. Accordingly, we decline to protect a practice that often leads to the very abuses that the statute is designed to prevent.

Comment: Several commenters requested safe harbor protection for the sale of an individual's practice to a group practice or the sale of part of a practice to another physician or group practice when the physician chooses to change the scope of his or her practice.

Response: We recognize that some buy-out arrangements are not abusive, and we would not want to prosecute such arrangements. However, we are also aware of abusive purchase arrangements, such as between ophthalmologists and optometrists, where one practitioner or group practice seeks to buy another practitioner's practice as a condition for continuing to make referrals. In essence, the sale becomes another mechanism for the buyer to profit from the stream of referrals made to the seller who previously practiced independently without dividing profits with the new "partner." No commenter proposed standards for a safe harbor provision that would cover only arrangements that are not abusive, and we are skeptical that such standards can be formulated. Accordingly, we have not protected this very diverse category of sales of practices. Rather, we are considering a limited new safe harbor provision for the purchase of group practices that we anticipate publishing as a separate regulation.

Comment: Two commenters asked the OIG to clarify the relationship between the safe harbor provision for the sale of a practice and the employee exception.

Response: Where a practitioner purchases another practitioner's practice, makes payments to that other practitioner which continue for some period of time, and retains that other practitioner on his or her staff as an employee, we believe that such payments are not protected under this provision or the employee exception. They do not qualify under this provision because the practitioner who sold the practice remains in a position to make referrals. The payments are not protected by the employee exception because that provision only protects payments "for employment in the provision of covered items or services * * *." These payments, however, relate to the purchase of a practice and not to services provided pursuant to employment for the provision of items or services. Of course, the employing practitioner who has bought out the other practitioner is making other payments for such employment services, and if a bona fide employment relationship as defined in 26 U.S.C. 3121(d)(2) exists, then these payments are protected under the employee safe harbor provision. As noted in the General comments section in section III.A. above, where parties are attempting to comply with two safe harbor provisions, we would expect separate justifications for compliance with each provision.

4. Referral Services—§ 1001.952(f)

Comment: Many commenters urged the OIG to extend this safe harbor provision beyond only physicians to include payments by chiropractors, dentists, podiatrists, psychologists, nursing homes and other health care providers to entities that refer members of the public to them.

Response: We agree and have revised this provision to protect payments by practitioners and other health care providers who utilize referral services.

Comment: Many commenters requested that the OIG define the term "qualified" with respect to the requirement that a referral service not exclude any "qualified" health care provider from participation in the service.

Response: Whether a particular health care provider is "qualified" as a participant in a referral service will vary depending on how the service is organized. For instance, to be qualified as a participant in a referral service run by a hospital, it may be necessary that the participant be an employee of that hospital. On the other hand, a referral service run by a professional organization may require only that the participant be a dues-paying member of that organization to qualify for participation. The determination as to whether a particular health care provider is "qualified" to participate in the service may be made by the referral service according to its own criteria. To be protected under this safe harbor, the referral service must apply the eligibility

criteria equally to all participants in the referral service.

In addition, the referral service must disclose to all persons seeking a referral the criteria it uses to determine who is qualified as a participant. The information that must be disclosed includes the manner in which it selects the pool of participants. In other words, if a pregnant woman calls a hospital's referral service, the referral service must disclose how it selects obstetricians to be qualified to receive referrals and whether the obstetrician has paid a fee to participate. The referral service must also disclose how the particular obstetrician is selected for the referral, for example, on a rotation basis. In addition, the referral service must disclose the relationship between the participant and the referral service, for example, that the obstetrician is on the active medical staff. Finally, the referral service must disclose what criteria it uses to exclude an individual or entity from continuing as a participant, for example, if a malpractice allegation is raised against the obstetrician or if he or she refuses to treat a certain level of uncompensated care cases.

The referral service must maintain a written record certifying that such disclosures have been made to each person seeking a referral. Such a record must be signed by either the person seeking the referral or by the individual making the disclosure on behalf of the referral service. This requirement will not be met if the referral service merely maintains a blank copy of the disclosure form or instructions to staff on how to make the disclosure.

Comment: One commenter suggested that a referral service should be permitted to require the practitioners or providers to charge clients that are referred by the service the same fees as they charge other clients.

Response: We agree and have revised paragraph (f)(3) to permit referral services to bar participants from engaging in discriminatory pricing practices.

Comment: A few commenters were uncertain about what fees could be charged for the referral service. They questioned whether the referral fee must be paid prior to the referral and whether a set amount could be charged for each referral.

Response: This provision protects fee payments that are related only to the cost of operating the referral service. This provision explicitly does not protect fees that in any manner are based on the volume or value of Medicare or Medicaid referrals or business otherwise generated by the participant for the referral service. While a referral fee need not be paid in full before any referrals are made, paragraph (f)(2) specifies that referral fees may not be based on the volume of referrals to the practitioner or provider.

Comment: One commenter asked whether the disclosure requirements of this provision could be satisfied by sending a letter to the referred person after the referral is made.

Response: Although the method of disclosure is not prescribed, to meet the requirements of this provision any disclosure must constitute effective disclosure. Effective disclosure requires that the relevant information is communicated in time for the information to be used by the beneficiary before an important decision is made. Accordingly, it is unlikely that disclosure after the referral has been made would constitute effective disclosure if the beneficiary had already seen the health care provider, or in some cases, if the appointment had already been made.

Comment: Several commenters questioned whether the statute and, therefore, this safe harbor provision, applies to referral services where health care providers are not charged for the services or where the services are provided pursuant to association dues.

Response: The statute applies to such referral services. The statute is implicated not only where direct payments are made in return for referrals, but also where indirect forms of remuneration are given for referrals. For example, hospitals often operate free referral services for members of their medical staffs as one of the benefits that comes with being on that hospital's staff. In return for the benefits of staff privileges (including the free referral service), physicians have a variety of obligations, such as sitting on various hospital committees. Depending on the circumstances, the services physicians furnish a hospital to assist in its operations may constitute a form of remuneration to the hospital for providing the referral service, and would be covered by the statute. As the United States Court of Appeals for the First Circuit found: "Giving a person an opportunity to earn money may well be an inducement to that person to channel potential Medicare payments towards a particular recipient." *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra,* 874 F.2d at 29. Therefore, staff physicians and hospitals seeking safe harbor protection must comply with this provision when they are engaged in a referral service that does not charge a specific fee.

5. Warranties—§ 1001.952(g)

Comment: Two commenters objected to the requirement that as a condition for protection the warranty include payments to compensate for any costs associated with the replacement of the product that is the subject of the warranty. These commenters pointed out that virtually no warranties now in existence pay for such expenses and that this requirement will necessitate the revision of warranty policies, which in turn must be paid for by price increases to cover this additional liability expense.

Response: We agree with the concern over the potential that this standard will increase costs, and are deleting it. We are revising this provision based on the Federal Trade Commission interpretation of 15 U.S.C. 2301(6), which does not require the manufacturer to make full payment to compensate for all costs associated with its defective product.

Comment: One pacemaker manufacturer noted that a particular warranty complied with the discount exception, implying that it need not comply with this warranty provision.

Response: We do not believe that warranty arrangements fit within the "discount" safe harbor provision, and are revising that provision accordingly. However, we agree that some of the policies underlying the discount exception should apply to warranties. Consequently, with respect to any reductions of equipment prices offered as part of a warranty agreement, we are requiring the same disclosure requirements as contained in the discount provision.

Comment: Two commenters urged the OIG to expand this safe harbor provision to protect "competitive replacement agreements." Under such an agreement, for example, a company offers various inducements to encourage hospitals (or other entities such as ASCs) and physicians to replace a defective pacemaker with one made by the company offering the inducements. These commenters argued that these arrangements should be protected because they make it easier to purchase the latest available technology. In addition, the comments pointed out that there is little potential for abuse because Peer Review organizations review virtually every pacemaker implant decision, and because competitive replacement programs put the beneficiary only in the same financial position he or she would be in if he or she purchased a replacement pacemaker

from the original manufacturer pursuant to that manufacturer's warranty.

Response: We generally agree with these comments, but we remain concerned that many of these programs either provide additional incentives beyond the original warranty or impose additional costs on the Medicare and Medicaid programs. For example, while some competitive replacement programs replace the item, such as a pacemaker, only on the same terms as those in the warranty of the original manufacturer, others replace the item under other conditions as well; while some provide the replacement item free of charge, others provide a discount on the replacement item capped at a specified dollar amount; and while some make no payments for medical expenses, others assist patients (either directly or by paying the health care provider) with their unreimbursed medical expenses up to a specified dollar amount. Depending on the original manufacturer's warranty, some of these programs do much more than merely put the beneficiary in the same position he or she would be in if he or she bought a replacement item from the original manufacturer under the terms of that warranty.

We believe that safe harbor protection is proper where a replacement program honors the original manufacturer's warranty, which qualifies by itself under this provision, and the agreement provides remuneration on the same terms as the original manufacturer's warranty without providing additional incentives or shifting additional costs to the Medicare and Medicaid programs. Under such programs, any incentive to replace a product under warranty stems from the original warranty, and not from the competitive replacement agreement.

We remain concerned about potential abuse in one additional area. Some competitive replacement agreements pay the health care provider or practitioner directly for the beneficiary's medical expenses. We believe that such direct payments are potentially abusive because the health care provider or practitioner knows that the warranty insures against beneficiaries' bad debts. Thus, we are adding paragraph (g)(4) so that safe harbor protection is not provided when payments are made to any health care provider (such as a hospital or ASC) for expenses such as medical, surgical or hospital expenses incurred by the beneficiary. Payments made to the health care provider or practitioner for the item itself, or price reductions on that item, are protected.

Comment: One commenter suggested that the OIG should provide safe harbor protection for payments made by manufacturers or suppliers to settle claims or to satisfy judgments arising out of product liability claims regardless of whether such payments were included in the warranty at the time of the original sale of the item.

Response: Where such payments are not part of a warranty made at the time of the original sale of an item, they do not appear to be intended to induce the purchase of that item, and hence are not covered by the statute. Where such payments are included in a warranty given at the time of sale, they would only be protected if they were made as part of a warranty that complied with this provision.

Comment: One commenter suggested that the OIG should not provide safe harbor protection for middlemen suppliers that expand the protection afforded by the manufacturer' s warranty.

Response: We believe that warranties generally benefit consumers as well as the Medicare and Medicaid program, even though they may constitute a technical violation of the statute. As long as a supplier acting as a middleman wholesaler complies with this safe harbor provision, we fail to see the harm when it provides greater benefits than those provided by the manufacturer. Such expanded warranties are commonly provided by middlemen in industries other than health care, for example, by automobile dealers, and we believe such expanded warranties should be encouraged.

6. Discounts—§ 1001.952(h)

Comment: A few commenters expressed concern about the meaning of the word "discount." For example, four commenters asked us to clarify whether a discount includes a general price reduction offered across the board to all buyers. One commenter argued that a marketing strategy similar to a warranty, but not falling within that safe harbor provision was, in fact, a discount.

Response: We believe that this first statutory exception is intended to cover discounts and other price reductions offered by a seller through an arms length transaction to induce a buyer to order or purchase goods (including items) or services for which the discount applies or other goods or services payable under Medicare or Medicaid. A discount typically is the difference in the price at which a good or service is normally sold compared to the price at which it is actually sold when the inducement is given.

The statutory discount exception applies only to discounts obtained by health care providers who submit claims to the Medicare and Medicaid programs. We believe that this exception was not intended to cover the offering of discounts by health care providers who submit claims, for example, to beneficiaries as part of a routine waiver program for coinsurance and deductible amounts. We have changed the definition of the term "discount" to clarify the limited scope of this exception. A discussion of the limited safe harbor protection we are providing for routine waivers is found in section III.B.4. In addition, as discussed in section III.B.3., price reductions negotiated by HMOs, preferred provider organizations and other health care plans to protect such discounted fee arrangements are expected to be addressed at a later date in a separate interim final rule.

We believe discounts are distinct from across-the-board price reductions offered to all buyers where the inducement that is made is so diffuse that it does not appear intended to encourage a particular buyer to purchase or order a particular good or service payable under Medicare or Medicaid.

In addition, we believe that Congress did not intend for this discount exception to apply to price reductions offered to one payor but not to Medicare or Medicaid. For example, we are aware of cases where laboratories offer a discount to physicians who then bill the patient, but do not offer the same discount to the Medicare program. In some of these cases, the discount offered to the physician is explicitly conditioned on the physician's referral of all of his or her laboratory business. Such a "discount" does not benefit Medicare, and is therefore inconsistent with the statutory intent for discounts to be reported to the programs with costs and charges reduced appropriately to reflect the discounts.

Another problem exists when an entity, which is both a provider or supplier of items or services and a joint venture partner with referring physicians, makes discounts to the joint venture as a way to share its profits with the physician partners. Very often this entity furnishes items or services to the joint venture, and also acts as the joint venture's general partner or provides management services to the joint venture. For example, in some cases a reference laboratory performs testing for another laboratory at a discount price in accordance with a management contract. In other cases, the services the reference laboratory provides are paid on the basis of a percentage of revenues that the joint

venture receives from Medicare. These arrangements are not arms length transactions where the joint venture entity shops around for the best price on a good or service. Rather, it has entered into a collusive arrangement with a particular provider or supplier of items or services that seeks to share its profits with referring physician partners. To clarify that we do not intend to protect these types of transactions which are sometimes made to appear as "discounts," we are clarifying the definition of "discounts" in paragraph (h)(3) of this section to permit only transactions made on an arms length basis.

Since many of these illegal transactions are made as part of personal services or management contracts, we are clarifying the definition of "discounts" to preclude discounts made as part of such transactions. We are making this revision for the additional reason that Congress did not intend to exempt such arrangements merely because those services were provided at a "discount." Since we believe that contracts for personal or management services do not fit within the ambit of the statutory discount exception, such arrangements must be analyzed under the respective safe harbor provision for those contracts. Of course, to the extent that the failure to report the actual price of the management contract implicates the civil monetary penalties law (section 1128A of the Act) liability may be imposed under that statute.

With respect to warranties, as we discussed in the warranty section immediately above, warranties are not discounts. Therefore to provide clearer guidance, we have modified the definition of the term "discount" in paragraph (h)(3) to exclude warranties and other examples of arrangements that do not constitute "discounts."

Comment: Many commenters urged the OIG to expand this safe harbor provision to include a variety of other discounting practices where the benefit received relates to something other than the specific good or service purchased or provided. Examples of the suggested permissible arrangements include bundled goods closely related to the purchased goods, such as free "surgical packs" (including such items as sutures, Healon, viscoelastics, and disposable gloves provided with purchases of intraocular lenses (IOLs), or credits toward free computers or other items that are useful in a physician's practice.

Response: We believe that such an interpretation goes well beyond the legislative intent of this statutory exception, and vitiates its purpose. We believe that Congress did not intend to include within this provision the practice of a seller giving away, or reducing the price of, one good in connection with the purchase of a different good. Such arrangements, for the most part, do not represent price reductions where the value of the goods received can be measured and fully reported to the Medicare and Medicaid programs.

Although there are many instances where these practices are cost effective arrangements that benefit the health care provider, there is enormous potential for abuse. One of the most common features of a serious kickback violation exists when a seller offers a valuable good, for example a car or a trip, to a person in return for that person's participation in activity prohibited under the statute, for example, referral of business payable by the Medicare and Medicaid programs. Thus, these commenters, while pointing to some potentially beneficial arrangements, are asking us to permit a broad class of arrangements that would include acts which have resulted in criminal convictions and at least one pending criminal prosecution. See *e.g., United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra.*

Even where the particular item that is being given away may result in a more effective means of delivering the supplies to the health care provider, these types of "discounts" cause problems because they often shift costs among reimbursement systems or distort the true costs of all the items. As a result, it may be difficult for the Medicare and Medicaid programs to determine the proper reimbursement levels.

For example, in developing accurate pricing data to assist HCFA in setting the amount of reimbursement for IOLs, we found that bundled pricing arrangements similar to those suggested by our commenters were common, and made it difficult to determine the true acquisition cost of IOLs. (See Medicare certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues, at 9–12, March 1988, OAI–09–88–00490.) In addition, HCFA determined that its IOL pricing data obtained from the ASCs "revealed significant inconsistencies in reporting net IOL costs." 53 FR 31476. The necessity of accurately reporting the true acquisition costs of IOLs undistorted by bundling arrangements is underscored by HCFA's stated policy in its final rule promulgating a $200 add-on rate: "to continue to collect data on IOL acquisition costs and purchasing arrangements to ensure that the IOL rate appropriately reflects lens acquisition costs." 55 FR 436.

Finally, this practice of bundling IOLs with other goods is of sufficient seriousness that it is the subject of at least one pending criminal prosecution.

For these reasons, we decline to broaden the scope of this provision to include discounts on bundled goods and have clarified the definition of the term "discount" to specifically exclude such arrangements. Of course, where discounts are offered on goods that are unbundled and the discount otherwise complies with the rules of this provision, safe harbor protection is granted.

For purchasing practices involving the free provision of another type of item, we will examine the surrounding circumstances to determine the desirability of prosecuting that arrangement. Examples of potential factors which we may consider include: (1) The amount of the benefit that was reported and passed along to the programs, (2) whether the good is separately reimbursable, and (3) the intent behind the arrangement.

A related issue is the practice of giving away free computers. In some cases the computer can only be used as part of a particular service that is being provided, for example, printing out the results of laboratory tests. In this situation, it appears that the computer has no independent value apart from the service that is being provided and that the purpose of the free computer is not to induce an act prohibited by the statute. Rather, the computer is part of a package of services provided at a price that can be accurately reported to the programs. In contrast, sometimes the computer that is given away is a regular personal computer, which the physician is free to use for a variety of purposes in addition to receiving test results. In that situation the computer has a definite value to the physician, and, depending on the circumstances, may well constitute an illegal inducement.

Comment: A large number of commenters urged the OIG to broaden this safe harbor provision to include other reductions in price, such as "rebates" and "credits." These commenters argued that such programs are equivalent to price reductions and are capable of being properly reported.

Response: We generally agree with the thrust of these comments and have revised the definition of discount in paragraph (h)(3) to protect rebate checks, redeemable coupons and credits, subject to the following conditions. First, because of our continued concern about the potential for improper use of redeemable coupons,

we are limiting the ability of recipients of such discounts to negotiate these instruments to third parties. As revised, this provision requires these instruments to be redeemed only by the seller. Second, the rebate check, redeemable coupon, or credit can only be applied to the same good or service that was purchased or provided. Thus, a redeemable coupon or credit obtained on the purchase of one good cannot be used toward the purchase of a different good. Third, like other discounts covered under this provision, these forms of discounts must be fully and accurately reported. Finally, except as noted below, such discounts must be given at the time the good or service was purchased or provided.

The reporting of credits presents an unusual situation because the monetary value of the credit only applies to future purchases of goods or services. Thus, to comply with this provision, the buyer must report the credits on the applicable cost report or claim form covering the goods or services for which the credit is being used.

Comment: A large number of commenters urged the OIG to expand this safe harbor provision to include other types of discount mechanisms where the value of the discount is not calculated until after some period of time has passed. Examples of such a discount mechanism include end-of-year discounts and prompt pay discounts. These commenters believed that these discounting mechanisms encourage legitimate, beneficial business practices that do not harm the program. In addition, many commenters pointed out that such discounting practices have long been encouraged through HCFA's prudent buyer guidelines. (Provider Reimbursement Manual, part I section 2103, HCFA Pub. No. 15–1)

Response: We recognize that there are many legitimate discount programs where the value of the discount is only reported after the good is purchased or the service is provided. Unfortunately, due to the nature of some reimbursement systems, it is sometimes not possible to determine retrospectively how much such discounts reduce the price of the goods or services previously purchased or provided. For example, it would be virtually impossible to take the numerous claims for cataract surgery submitted by a physician in a given year and determine the true acquisition cost of an IOL provided to that physician when the discount is only calculated at year end. Thus, paragraph (h)(1)(iii) of this section, which governs discounts on items and services paid on the basis of charges or acquisition costs, does not permit end-of-year discounts. On the other hand, where the Department or a State agency requires a health care provider to maintain cost reports (including HMOs, CMPs and health care prepayment plans (HCPPs pursuant to agreements under sections 1876(h) or 1833 of the Act), we believe that end of year calculations of discounts on purchases of the same good or service can be fully and accurately reported, as well as those discounts obtained at the time of the purchase.

Therefore, we are revising this provision in paragraph (h)(1)(i) of this section (which applies only to cost report providers) to protect such end-of-year discounts when all of the following conditions are met. One, end-of-year discounts can only be calculated based on purchases of the same good or service in a single fiscal year. Of course, the discount may be obtained at the time of purchase as well. Two, the entity must claim the benefit of the discount from the seller in the fiscal year in which the discount is earned or the following year. In many cases, a seller will be able to calculate the amount of the discount and give the buyer the benefit of the discount (for example, in a credit or reduced price on future purchases of that same good) in the same fiscal year in which the credit was earned. However, in many other cases, the seller may take several weeks after the end of a fiscal year to give the buyer the necessary information. Under either circumstance, this prong of the safe harbor is satisfied. Three, the buyer must fully and accurately report the discount in the cost report for the fiscal year in which the benefit of the discount is received. And four, if the Secretary or a State Medicaid agency requests information, the buyer must provide the appropriate invoices from the seller. (See discussion below of seller's separate reporting requirements.)

We believe that this revision complies with the most important statutory requirement of the discount exception—full reporting—and accommodates many of these end-of-year discounting programs. In addition, we believe that this revision is consistent with HCFA's prudent buyer rules, which are not applicable to charge-based health care providers.

With respect to prompt pay discounts, we have made no change to include such discount arrangements. No change is necessary because, by definition, they are designed to induce prompt payment, and thus do not appear to violate the statute. Of course, we will continue to scrutinize closely "prompt pay" discounts to make sure that they are not payments made for an illegal purpose cloaked under a legitimate label.

Comment: Three commenters requested the OIG to provide various kinds of special treatment for HMOs and PPOs. For example, one commenter urged the OIG to broaden this provision as it applies to HMOs to permit cash grants and training assistance. Another commenter urged the OIG to change the definition of discount to permit discounts offered to HMOs and PPOs by contract health care providers.

Response: We recognize that HMOs and CMPs paid in accordance with a risk contract with HCFA or a State health care program deserve special attention, and paragraph (h)(1)(ii) follows the proposed rule recognizing their special status. These HMOs and CMPs need not report discounts they receive except as may otherwise be required under their risk contract.

In addition, we have expanded this provision in significant ways that should be of assistance to all health care providers, including HMOs. However, we do not believe that it would be appropriate to provide special safe harbor protection for purchasing arrangements that go beyond the intended purpose of this statutory exception. As with all arrangements that drift from a safe harbor out to sea, we will examine them on a case-by-case basis to determine whether the statute has been violated in such a way as to warrant prosecution.

With respect to discounts offered to HMOs, CMPs and PPOs by contract health care providers, as discussed in section III.B.3. above, we are expecting to promulgate a new interim final safe harbor provision to protect arrangements between these parties for the furnishing of covered items and services to beneficiaries where certain standards are met.

Comment: Many commenters objected on a variety of grounds to the requirement that charge-based health care providers reduce their charges by the full amount of the discount. These commenters pointed out that historically the Medicare program has not sought to regulate the discrete components that make up a particular charge. In addition, many suggested that the OIG will destroy the incentive of obtaining discounts if it requires health care providers to pass along the full amount of the discount to the programs. Another rationale for suggesting a change in this safe harbor provision is that the OIG should treat cost and charge-based health care providers in the same manner, and because this safe harbor

provision does not require a reduction in reported costs for cost-based health care providers, no parallel requirement should be placed on charge-based health care providers.

Response: We agree with the thrust of these comments, and are revising paragraph (h)(1)(iii) of this safe harbor provision to delete the requirement that charge-based health care providers reduce their charges by the full amount of the discount. Such a provision would be largely unenforceable. As many commenters pointed out, the Department has never monitored the various input costs that make up a health care provider's charge. Therefore, we are not in a position to know a health care provider's base from which he or she was reducing the charge. Thus, for example, if a physician receives a discount as defined in this provision valued at $4 per service, the physician could argue that he or she is not required to reduce the charge by that amount because other costs included in that charge had increased to offset the $4 discount. We are generally not in a position to prove otherwise.

Although we continue to believe that individuals and entities have an obligation to pass along to the Medicare and Medicaid programs the value of discounts they receive, we believe that the actual savings that would result from requiring such charge reductions would be offset by the cost of enforcement. In many areas of reimbursement, for example, physician or laboratory services and purchases of IOLs, Congress has steadily moved away from charge-based reimbursement or has imposed limitations on charges. We believe that those statutory reforms are better suited to address the problem of excessive charging practices. Nonetheless, even though we are deleting this requirement for the purposes of this safe harbor provision, we strongly encourage charge-based health care providers to pass along discounts to the programs.

With respect to the different treatment of health care providers based on the type of reimbursement system, we believe that reasonable safe harbor rules for discounts must be closely tailored to the various reimbursement principles and cost reporting mechanisms. Just as we believe it is appropriate to treat HMOs reimbursed on a capitated basis differently from other health care providers, we now believe that it is appropriate to treat charge-based health care providers differently from cost-based health care providers for the purposes of requiring the discount to be passed along to the program. Such an approach is far preferable than a blind adherence to uniform treatment of health care providers. We believe that such a position is a reasonable reading of the statutory requirement that "the reduction in price [be] * * * appropriately reflected in the costs claimed or charges made by the provider or entity * * *." (Section 1128B(b)(3)(A) of the Act.)

We emphasize, however, that paragraph (h)(1)(iii) still requires charge-based health care providers to comply with the respective rules regarding full and accurate reporting of discounts as defined in this provision. This reporting requirement is limited to items or services that are separately claimed as a line item for payment with the Department or a State agency. As discussed below, under paragraph (h)(1)(iii) of this section, we will not require health care providers to report discounts they receive on goods purchased for which a line item charge is not separately made, but rather is included within their professional charge.

In addition, we note that some commenters were confused about the requirements we are placing on health care providers reimbursed on the basis of costs. The regulation need not specify that a health care provider must separately reduce its cost by the amount of the discount because the cost reporting requirements accomplish the statutory purpose of having the amount of the discount "appropriately reflected in the costs claimed." Whether a provider submits cost reports (and complies with paragraph (h)(1)(i) of this section) or submits a seller's invoice to demonstrate its acquisition costs (and complies with paragraph (h)(1)(iii) of this section), the amount of the discount is passed along to the Medicare and Medicaid programs. As a result, this revised discount provision treats items and services reimbursed on the basis of charges differently from those reimbursed on the basis of costs, because costs will be reduced by the amounts of discounts whereas charges will not be affected.

Finally, although we have attempted to tailor this discount provision to make sense within the context of the varying reimbursement rules, as we have explained in section III.A. above, compliance with this safe harbor provision in no way affects Medicare or Medicaid reimbursement rules.

Comment: Five commenters discussed the requirement in the proposed rule that the discount appear on the seller's invoice or statement and the consequent liability of the seller for failing to make such disclosure. They questioned the apparent inconsistency with the preamble to the proposed rule that no requirements need be placed on sellers in order for their discounts to qualify under this exemption.

Response: We agree with the comments that we should clarify the requirement for a seller to report the value of the discount on the invoice or statement provided to a purchaser, and we are modifying this provision in paragraph (h)(2) accordingly. As discussed above, such standards are necessary to assist the Department and State agencies in verifying that the buyer has fully and accurately reported the value of the discount.

This paragraph describes the requirements we are placing on sellers. With respect to those who sell goods or services to risk contract HMOs and CMPs at a discount, paragraph (h)(2)(i) makes clear that the seller is under no obligation to report the discount to the HMO or CMP for purposes of this safe harbor. Paragraph (h)(2)(ii) sets out the seller's requirements with respect to its sales to all other health care providers. It must either fully and accurately report the discount on the invoice or statement. In addition, it must inform the buyer of its obligations under paragraph (h)(1). With respect to permissible end-of-year discounts, this paragraph, as revised, requires the seller's invoice or statement to show clearly the existence of a discount program, and the seller must inform the buyer of its obligations under paragraph (h)(1). The seller is also required to provide the buyer with a separate document, such as a reconciliation statement, showing the calculation of the discount and identifying the specific goods or services purchased to which the discount is attributed.

It was our original intent not to hold sellers liable for the reporting omissions of health care providers, and we believe such a policy remains appropriate. However, we agree with the commenters that some rules should apply to sellers. We believe that the limited conditions we are placing on sellers seeking safe harbor protection will not place an undue burden on them, but are sufficient to prevent them from avoiding liability when they engage in unlawful schemes disguised as discounts.

Comment: Many commenters questioned what information must be reported to the program and the methods to be used in reporting such information. Among the questions that were asked is whether the list price,

discount, and final actual price all need to be reported on the invoice, claim, or statement. In addition, many commenters suggested that it was unrealistic to require practitioners to report all discounts on goods they purchase, such as office supplies and surgical gloves, for which they do not charge separately, but rather include within their professional service charge.

Response: The fundamental test for complying with the reporting requirement is whether the actual purchase price net of any discount is fully and accurately reported by the seller on the invoice or statement (or, where applicable for end-of-year discounts, on a reconciliation statement) and by the purchaser on the claim or request for payment submitted to Medicare and Medicaid. We do not necessarily require all the information in the calculation of the discount to be noted specifically on the invoice, statement, claim or request for payment; rather, a notation may be made that the actual purchase price is "net discount." Such reporting is acceptable for the purpose of satisfying this provision.

We agree that no purpose would be accomplished if we were to require practitioners to report the discounts they receive on office supplies where there is no requirement to separately report the item on which the discount is received. Thus, we are clarifying the requirements for reporting discounts under paragraph (h)(1)(iii) of this section to make clear that where a practitioner obtains a discount, defined in this provision, for a good that is included as part of his or her professional service charge, such discounts need not be reported. Where a practitioner, however, purchases an item or service at a discount and such item or service is separately claimed as a line item on the applicable claim form, the discounted price must be fully and accurately reported. For example, where a surgeon performs cataract surgery in his or her office and implants an intraocular lens (IOL), the surgeon must report any discount received on the price of the IOL.

Finally, it is noted that where the discount in question does not qualify as a discount under this provision, no safe harbor protection applies. For example, as we stated above, we are not expanding this safe harbor provision to protect the offering of a free good different from the one that is being purchased. Thus, consistent with that position, we are not willing to protect the offering of free computers even when named as "office supplies" to induce the purchase of other items that are reimbursable separately.

7. Employees—§ 1001.952(i)

Comment: Many commenters urged the OIG to extend this exception to apply to independent contractors paid on a commission basis. Two commenters asserted that the legislative history of the statute makes clear that Congress intended to include independent contractors in the employee exception. In support of this contention, they quoted remarks made by Representative Rostenkowski when the House was considering the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977. (123 Cong. Rec. 30,280 (1977))

Response: We continue to reject this approach because of the existence of widespread abusive practices by salespersons who are independent contractors and, therefore, who are not under appropriate supervision and control. Although two commenters asserted that they could achieve appropriate supervision and control of independent contractors by including restrictive terms in the contract, we cannot expand this provision to cover such relationships unless we can predict with reasonable certainty that they will not be abusive. We are confident that the employer-employee relationship is unlikely to be abusive, in part because the employer is generally fully liable for the actions of its employees and is therefore more motivated to supervise and control them.

Furthermore, we believe that Representative Rostenkowski's remarks do not reflect congressional intent in this case. His comments related to the House version of the employee exception that was rejected by the Conference Committee. Instead, Congress passed the Senate version, which expressly limited the exception to bona fide employment relationships (See H.Conf.Rep. No. 673, 95th Cong., 1st Sess. 41 (1977)). Consequently, we find no support for the position that Congress intended to cover independent contractors under this exception.

Comment: Two commenters questioned the wisdom of the employee exception, stating that health care providers should not be able to refer patients to other health care providers within their own offices because abuse could be worse than when individuals or entities make referrals to outside sources.

Response: The exception for bona fide employment relationships is clear on the face of the statute, and we are not free to ignore that statutory mandate.

Comment: One commenter asserted that we do not have the statutory authority to limit the definition of "employee" to the meaning it has under 26 U.S.C. 3121(d)(2).

Response: As we have discussed, Congress expressly limited the scope of the employee exception to "bona fide employment relationship[s]" between an employer and an employee. The Secretary clearly has the power, and indeed the duty, to establish the criteria for a bona fide employment relationship. The Internal Revenue Service's (IRS) definition of employee is a longstanding one that has been developed by both agency and court rulings. Furthermore, this definition is sufficiently narrow that it excludes certain types of relationships that we believe tend to be associated with violations of the statute. We are clarifying this safe harbor provision to make clear that the meaning of the term "employee" is defined not only by 26 U.S.C. 3121(d)(2) itself, but also by the IRS's interpretation of that provision as codified in its regulations and other interpretive sources.

Comment: One commenter inquired whether a part-time employee paid on a commission-only basis falls within the employee exception.

Response: As long as a bona fide employer-employee relationship exists between the part-time employee and the employer, such a relationship falls within the scope of this provision.

Comment: Some commenters asserted that many legitimate employment relationships that are common in the health care industry are not protected from prosecution under this exception. One commenter suggested that the employee exception include independent contractors where beneficiaries are being induced to participate in cost-containment programs because such programs are beneficial to Medicare and State health care programs, and therefore should be protected.

Response: We recognize that this provision does not cover some types of personal service arrangements, but our position is necessary to protect the program from abuse to a reasonable degree. However, many of these other arrangements could be protected under the personal services and management contracts safe harbor provision.

Comment: One commenter stated that hospitals are often compelled by State "corporate practice of medicine" requirements to employ physicians and other health care personnel as independent contractors, and that these employment relationships should be afforded safe harbor protection.

Response: We understand that there may be circumstances where, because of State laws, health care providers may

not be able to enter into arrangements with health care personnel that comply with the IRS definition of employee. In such cases, however, health care providers may obtain protection for payments from these arrangements by drafting their personal contracts to satisfy the safe harbor provision for personal services and management contracts.

8. Group Purchasing Organizations—§ 1001.952(j)

Comment: One commenter urged the OIG to further define what constitutes a group purchasing organization (GPO) for purposes of this provision. This commenter specifically questioned whether a nursing home chain that requested percentage payments from laboratories as "GPO fees" in return for the referral of laboratory services from member nursing homes fit this definition.

Response: As stated in the preamble to the proposed rule, this exception applies to payments made by a vendor of goods or services to a person authorized to act on behalf of a group of individuals or entities who are furnishing Medicare or Medicaid services. Our definition of the term "GPO" makes clear that a nursing home chain requesting fees for referrals would not qualify for this safe harbor because a chain of nursing homes that are wholly owned subsidiaries of a single corporate entity for all practical purposes constitutes a single entity and not a "group" of entities. As we discuss in section III.D. below, because of the special relationship wholly-owned subsidiaries have with their parent corporation, we are considering separate protection for payments between these entities. However, following this reasoning, we do not believe it appropriate for a nursing home chain to qualify as a GPO and request "GPO fees" for referrals. If a nursing home directly requested such a fee it would appear to represent an illegal inducement. We see no reason how such a solicitation sanitizes the illegality when it is made indirectly by a wholly-owned subsidiary of the nursing home, instead of directly by the nursing home itself.

In addition, we believe that Congress did not intend this exception to apply where it is the vendor and not the health care provider who is furnishing services and directly billing the Medicare or Medicaid program. For example, in addition to services furnished by the nursing home, other health care providers furnish many part B services to nursing home patients, such as laboratory services and durable medical equipment (DME). We believe that a GPO, acting on behalf of a group of nursing homes, is not serving as a GPO when it receives a "GPO fee" from a laboratory or DME supplier that is supplying goods or services to nursing home patients and billing Medicare or Medicaid directly.

Comment: Several commenters objected to the requirement that a purchasing agent, i.e., a GPO, have a written agreement with each individual or entity in the group that specifies the amount the agent will be paid by each vendor. This requirement, they asserted, would be burdensome and expensive.

Response: We agree with the general thrust of these comments and have modified paragraph (j)(1)(ii). The statutory exception requires that written contracts specify the amount the GPO will be paid by the vendor. We believe that this statutory mandate is satisfied if the GPO discloses to a health care provider the fees it will receive from only those vendors that provide goods or services to that provider. This obviates the need for the GPO to divulge fees from vendors that do not provide goods or services to that particular individual or entity.

Comment: To promote administrative convenience, efficiency, and cost-containment purposes, several commenters requested that the GPO should be permitted to specify the range of fees to be paid by the potential vendors instead of the actual amount. One commenter asserted that because of the varying contracts between GPOs and their vendors, it was impossible to determine and disclose in advance the amount the GPO would receive from its vendors.

Response: We agree that it is not necessary, in all circumstances, to specify the exact fees the GPO will receive from its vendors as a result of a particular member's purchases. The legislative history to this exception, however, shows Congress's concern for excessive GPO fees, particularly those exceeding 3 percent. (See, H.Conf. Rep. 1012, 99th Cong., 2d Sess. 310–11 (1986)) For this reason, we are revising this provision (see paragraph (j)(1)(i)) so that a GPO needs to specify the administrative fee it is paid from vendors only if any fee will be above 3 percent.

In the event that the fee cannot be ascertained at the time of the contract or the fee is not fixed at 3 percent or less, the contract must state the maximum amount that could be paid to the GPO by the vendor. This mechanism will permit some flexibility in payments made to the GPO, yet retain the focus on excessive fees about which Congress was concerned.

Comment: Several commenters questioned the interrelationship of this provision to the discount safe harbor.

Response: Several commenters appeared confused about the relationship between these two provisions. This is an example of an arrangement where two safe harbor provisions could apply, i.e., one applicable to discounts, and one applicable to GPOs. However, the GPO provision applies only to payments made by a vendor of goods or services to a person authorized to act as a GPO. Payments, such as discounts, made by vendors of goods or services to health care providers must qualify under the discount exception.

D. Comments on Proposals for New Safe Harbor Provisions

In sections III.B.3. and III.C.1. we discussed proposals and our responses regarding new safe harbor provisions for negotiated price reductions and investment interests. In this section we discuss the remaining proposals and our responses regarding potential new safe harbors.

Note: Any discussion below indicating that we are considering a new safe harbor provision should in no way be construed as legalizing the business arrangement at this time.

Comment: A large number of commenters urged the OIG to adopt a safe harbor provision to protect certain physician recruitment activities. They commented that subsidy payments to physicians for recruitment purposes provide important benefits to many communities that have difficulty in obtaining and retaining physicians. Some urged that we also protect hospital recruitment activities even though a physician does not need to move his or her residence to join the medical staff of the new hospital. Others urged a variety of other provisions, for example, that we not require the physician to disclose to his or her patients the relationship between the physician and the hospital, and that we not specify how long the payments may continue.

Response: We agree with the need to protect some recruitment activities for physicians and other practitioners, and we are considering a new safe harbor provision for practitioner recruitment that we anticipate publishing as a separate regulation.

Comment: Three commenters requested the OIG to adopt a safe harbor provision that will protect all payments that subsidize malpractice

premiums. These commenters stressed that such payments have an overwhelming public benefit with limited potential for abuse. One of these commenters argued that obstetrician-gynecologists are facing significant difficulty in paying for malpractice insurance, and suggested that many communities are facing a cut-off of obstetrical services as a result.

Response: We understand the need to assist certain physicians in making malpractice insurance more affordable, and we are considering a new safe harbor provision which we anticipate publishing as a separate regulation, that would protect certain arrangements that subsidize the costs of a practitioner's malpractice insurance premiums where there is no likelihood of abuse.

Comment: Several commenters asked the OIG to provide a new safe harbor provision to protect different types of cross-referral arrangements where no money is exchanged between the parties, for example, traditional referral patterns between a primary care practitioner and specialist, between a hospital and nursing home, and among practitioners within a group practice.

Response: We agree that a large majority of these relationships benefit patients by assuring either proper continuity of care or convenient access to a specialist in whom the primary care physician has confidence. Thus, we are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, that would protect many such arrangements where there is no likelihood of abuse.

Comment: Two commenters suggested that the regulation protect payments related to cooperative hospital service organizations qualified under section 501(e) of the Internal Revenue Code of 1986. Under this statute and implementing Internal Revenue Service regulation, these organizations are formed by one or more hospitals (known as "patron-hospitals") to provide specifically enumerated services, such as purchasing, billing, and clinical services solely for the benefit of its patron-hospitals. In addition, these entities are required to distribute "all net earnings to patrons on the basis of services performed." (26 U.S.C. 501(e)(2)) The commenters believed that although such a distribution requirement runs afoul of the anti-kickback statute, the services they perform are beneficial to rural communities in particular, and there has been no indication of abuse by these organizations.

Response: We agree and are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, that would protect payments between cooperative hospital service organizations and patron-hospitals.

Comment: Many commenters requested the OIG to clarify that payments between corporations which have common ownership are not subject to the statute. Commenters cited as examples intracorporate discounts and payments between two wholly-owned subsidiaries. Some commenters argued that referral arrangements between two related corporations do not constitute "referrals" within the meaning of the statute, and suggested that the OIG define the word "referral" to exclude such activity.

Response: We agree that much of the activity described in these comments is either not covered by the statute or deserves safe harbor protection. We believe that the statute is not implicated when payments are transferred within a single entity, for example, from one division to another. Thus, no explicit safe harbor protection is needed for such payments.

Because the statute is implicated when payments are made from one entity to another even though the payments are made between entities with common ownership, we believe that safe harbor protection may be appropriate. However, we remain concerned about wholly-owned shell entities that are established for a fraudulent purpose, for example, to help hide the identity of the owners or to shield assets. Nonetheless, we are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, that would protect payments between wholly owned subsidiaries and other payments between entities where exclusive ownership control is present and the practice is not otherwise abusive.

We do not, however, believe that the situations commenters described require us to define the word "referral." The commenters do not appear concerned with any unusual conduct that warrants special attention. Rather the commenters have focused on the source and recipient of the payment in question. Thus, our consideration in any proposed rule will be focused on the relationship of the parties making and receiving payments.

IV. Additional Information

A. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order criteria for a "major rule," that is, that which would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities.

In the proposed rule published on January 23, 1989, we indicated that this provision was designed to specify the various business and payment practices that would not be considered a kickback for purposes of criminal or civil remedies, and served to clarify departmental policy as to the legality of various commercial arrangements. We stated that the great majority of health care providers and practitioners do not engage in illegal remuneration schemes, and that the aggregate economic impact of this provision should, in effect, be minimal, affecting only those who have chosen to engage in prohibited payment schemes in violation of the statutory intent. As indicated in the proposed regulation's impact statement, the rulemaking is a result of a statutory requirement and not a Department initiative.

The two comments we received on the cost impact indicated that the safe harbors for discounts and personnel services contracts would cast a cloud over a substantial number of legitimate business practices and existing contractual arrangements. Both commenters believed that a comprehensive regulatory flexibility analysis should be performed and a statement added disclosing the possible financial impact of this rulemaking.

Consistent with the intent of the statute, this regulation has been designed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. However, the regulation imposes no requirements on anyone. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute. Thus, it is impossible to predict how

many individuals and entities will be affected by this regulation. For these reasons, we have determined that a regulatory impact analysis is not required. Further we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

B. Department of Justice Review

In accordance with the provisions of Public Law 100–93, this regulation has been developed in consultation with the Department of Justice.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR part 1001 is amended as set forth below:

1. The heading for part 1001 is revised to read as follows:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

2. The authority citation for part 1001 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(e), and 1395hh, and section 14 of Public Law 100–93, unless otherwise noted.

3. Section 1001.1 is revised to read as follows:

§ 1001.1 Scope and purpose.

(a) This part sets forth provisions for the detection of fraud and abuse in the Medicare and certain State health care programs. It implements statutory sections, specifically identified in each subpart, aimed at protecting the integrity of the Medicare and certain State health care programs.

(b) This part also sets forth provisions addressing the OIG's authority to exclude any individual and entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in this part.

4. A new Subpart E is added to read as follows:

Subpart E—Permissive Exclusions

Sec.

Subpart E—Permissive Exclusions

§ 1001.951 Fraud, kickbacks and other prohibited activities.

The OIG may exclude any individual or entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in § 1001.952.

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(a) *Investment Interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that is a return on an investment interest, such as a dividend or interest income, made to an investor as long as all of the applicable standards are met within one of the following two categories of entities:

(1) If, within the previous fiscal year or previous 12 month period, the entity possesses more than $50,000,000 in undepreciated net tangible assets (based on the net acquisition cost of purchasing such assets from an unrelated entity) related to the furnishing of items and services, all of the following five applicable standards must be met—

(i) With respect to an investment interest that is an equity security, the equity security must be registered with the Securities and Exchange Commission under 15 U.S.C. 78*l*(b) or (g).

(ii) The investment interest of an investor in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(iii) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(iv) The entity must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(v) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment of that investor.

(2) If the entity possesses investment interests that are held by either active or passive investors, all of the following eight applicable standards must be met—

(i) No more than 40 percent of the value of the investment interests of each class of investments may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity.

(ii) The terms on which an investment interest is offered to a passive investor, if any, who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be no different from the terms offered to other passive investors.

(iii) The terms on which an investment interest is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must not be related to the previous or expected volume of referrals, items or services furnished, or the amount of business otherwise generated from that investor to the entity.

(iv) There is no requirement that a passive investor, if any, make referrals to, be in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity as a condition for remaining as an investor.

(v) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(vi) No more than 40 percent of the gross revenue of the entity in the previous fiscal year or previous 12 month period may come from referrals, items or services furnished, or business otherwise generated from investors.

(vii) The entity must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(viii) The amount of payment to an investor in return for the investment interest must be directly proportional to

the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

For purposes of paragraph (a) of this section, the following terms apply. *Active investor* means an investor either who is responsible for the day-to-day management of the entity and is a bona fide general partner in a partnership under the Uniform Partnership Act or who agrees in writing to undertake liability for the actions of the entity's agents acting within the scope of their agency. *Investment interest* means a security issued by an entity, and may include the following classes of investments: Shares in a corporation, interests or units of a partnership, bonds, debentures, notes, or other debt instruments. *Investor* means an individual or entity either who directly holds an investment interest in an entity, or who holds such investment interest indirectly by, including but not limited to, such means as having a family member hold such investment interest or holding a legal or beneficial interest in another entity (such as a trust or holding company) that holds such investment interest. *Passive investor* means an investor who is not an active investor, such as a limited partner in a partnership under the Uniform Partnership Act, a shareholder in a corporation, or a holder of a debt security.

(b) *Space Rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee to a lessor for the use of premises, as long as all of the following five standards are met—

(1) The lease agreement is set out in writing and signed by the parties.

(2) The lease specifies the premises covered by the lease.

(3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.

(4) The term of the lease is for not less than one year.

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of paragraph (b) of this section, the term *fair market value* means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare or a State health care program.

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee of equipment to the lessor of the equipment for the use of the equipment, as long as all of the following five standards are met—

(1) The lease agreement is set out in writing and signed by the parties.

(2) The lease specifies the equipment covered by the lease.

(3) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such interval.

(4) The term of the lease is for not less than one year.

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of paragraph (c) of this section, the term *fair market value* means the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value one party (either the prospective lessee or lessor) would attribute to the equipment as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare or a State health care program.

(d) *Personal services and management contracts.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a principal to an agent as compensation for the services of the agent, as long as all of the following six standards are met—

(1) The agency agreement is set out in writing and signed by the parties.

(2) The agency agreement specifies the services to be provided by the agent.

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, and the exact charge for such intervals.

(4) The term of the agreement is for not less than one year.

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

(6) The services performed under the agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.

For purposes of paragraph (d) of this section, an agent of a principal is any person, other than a bona fide employee of the principal, who has an agreement to perform services for, or on behalf of, the principal.

(e) *Sale of practice.* As used in section 1128B of the Act, "remuneration" does not include any payment made to a practitioner by another practitioner where the former practitioner is selling his or her practice to the latter practitioner, as long as both of the following two standards are met—

(1) The period from the date of the first agreement pertaining to the sale to the completion of the sale is not more than one year.

(2) The practitioner who is selling his or her practice will not be in a professional position to make referrals to, or otherwise generate business for, the purchasing practitioner for which payment may be made in whole or in part under Medicare or a State health care program after one year from the date of the first agreement pertaining to the sale.

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value between an individual or entity ("participant") and another entity serving as a referral service ("referral service"), as long as all

of the following four standards are met—

(1) The referral service does not exclude as a participant in the referral service any individual or entity who meets the qualifications for participation.

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by the participants for the referral service for which payment may be made in whole or in part under Medicare or a State health care program.

(3) The referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at reduced charge.

(4) The referral service makes the following five disclosures to each person seeking a referral, with each such disclosure maintained by the referral service in a written record certifying such disclosure and signed by either such person seeking a referral or by the individual making the disclosure on behalf of the referral service—

(i) The manner in which it selects the group of participants in the referral service to which it could make a referral;

(ii) Whether the participant has paid a fee to the referral service;

(iii) The manner in which it selects a particular participant from this group for that person;

(iv) The nature of the relationship between the referral service and the group of participants to whom it could make the referral; and

(v) The nature of any restrictions that would exclude such an individual or entity from continuing as a participant.

(g) *Warranties.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value under a warranty provided by a manufacturer or supplier of an item to the buyer (such as a health care provider or beneficiary) of the item, as long as the buyer complies with all of the following standards in paragraphs (g)(1) and (g)(2) of this section and the manufacturer or supplier complies with all of the following standards in paragraphs (g)(3) and (g)(4) of this section—

(1) The buyer must fully and accurately report any price reduction of the item (including a free item), which was obtained as part of the warranty, in the applicable cost reporting mechanism or claim for payment filed with the Department or a State agency.

(2) The buyer must provide, upon request by the Secretary or a State agency, information provided by the manufacturer or supplier as specified in paragraph (g)(3) of this section.

(3) The manufacturer or supplier must comply with either of the following two standards—

(i) The manufacturer or supplier must fully and accurately report the price reduction of the item (including a free item), which was obtained as part of the warranty, on the invoice or statement submitted to the buyer, and inform the buyer of its obligations under paragraphs (a)(1) and (a)(2) of this section.

(ii) Where the amount of the price reduction is not known at the time of sale, the manufacturer or supplier must fully and accurately report the existence of a warranty on the invoice or statement, inform the buyer of its obligations under paragraphs (g)(1) and (g)(2) of this section, and, when the price reduction becomes known, provide the buyer with documentation of the calculation of the price reduction resulting from the warranty.

(4) The manufacturer or supplier must not pay any remuneration to any individual (other than a beneficiary) or entity for any medical, surgical, or hospital expense incurred by a beneficiary other than for the cost of the item itself.

For purposes of paragraph (g) of this section, the term *warranty* means either an agreement made in accordance with the provisions of 15 U.S.C. 2301(6), or a manufacturer's or supplier's agreement to replace another manufacturer's or supplier's defective item (which is covered by an agreement made in accordance with this statutory provision), on terms equal to the agreement that it replaces.

(h) *Discounts.* As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(3) of this section, on a good or service received by a buyer, which submits a claim or request for payment for the good or service for which payment may be made in whole or in part under Medicare or a State health care program, from a seller as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section and the seller complies with the applicable standards of paragraph (h)(2) of this section:

(1) With respect to the following three categories of buyers, the buyer must comply with all of the applicable standards within each category—

(i) If the buyer is an entity which reports its costs on a cost report required by the Department or a State agency, it must comply with all of the following four standards—

(A) the discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer;

(B) the buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year;

(C) the buyer must fully and accurately report the discount in the applicable cost report; and

(D) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section.

(ii) If the buyer is an entity which is a health maintenance organization or competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(iii) If the buyer is not an entity described in paragraphs (h)(1)(i) or (h)(1)(ii) of this section, it must comply with all of the following three standards—

(A) the discount must be made at the time of the original sale of the good or service;

(B) where an item or service is separately claimed for payment with the Department or a State agency, the buyer must fully and accurately report the discount on that item or service; and

(C) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii)(A) of this section.

(2) With respect to either of the following two categories of buyers, the seller must comply with all of the applicable standards within each category—

(i) If the buyer is an entity described in paragraph (h)(1)(ii) of this section, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is any other individual or entity, the seller must comply with either of the following two standards—

(A) where a discount is required to be reported to the Department or a State agency under paragraph (h)(1) of this section, the seller must fully and

accurately report such discount on the invoice or statement submitted to the buyer, and inform the buyer of its obligations to report such discount; or

(B) where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice or statement submitted to the buyer, inform the buyer of its obligations under paragraph (h)(1) of this section and, when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied.

(3) For purposes of this paragraph, the term *discount* means a reduction in the amount a seller charges a buyer (who buys either directly or through a wholesaler or a group purchasing organization) for a good or service based on an arms length transaction. The term *discount* may include a rebate check, credit or coupon directly redeemable from the seller only to the extent that such reductions in price are attributable to the original good or service that was purchased or furnished. The term *discount* does not include—

(i) Cash payment;

(ii) Furnishing one good or service without charge or at a reduced charge in exchange for any agreement to buy a different good or service;

(iii) A reduction in price applicable to one payor but not to Medicare or a State health care program;

(iv) A reduction in price offered to a beneficiary (such as a routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary);

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract; or

(vii) Other remuneration in cash or in kind not explicitly described in this paragraph.

(i) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare or a State health care program. For purposes of paragraph (i) of this section, the term *employee* has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2):

(j) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include any payment by a vendor of goods or services to a group purchasing organization (GPO), as part of an agreement to furnish such goods or services to an individual or entity as long as both of the following two standards are met—

(1) The GPO must have a written agreement with each individual or entity, for which items or services are furnished, that provides for either of the following—

(i) The agreement states that participating vendors from which the individual or entity will purchase goods or services will pay a fee to the GPO of 3 percent or less of the purchase price of the goods or services provided by that vendor.

(ii) In the event the fee paid to the GPO is not fixed at 3 percent or less of the purchase price of the goods or services, the agreement specifies the amount (or if not known, the maximum amount) the GPO will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and the GPO).

(2) Where the entity which receives the good or service from the vendor is a health care provider of services, the GPO must disclose in writing to the entity at least annually, and to the Secretary upon request, the amount received from each vendor with respect to purchases made by or on behalf of the entity.

For purposes of paragraph (j) of this section, the term *group purchasing organization* (GPO) means an entity authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services for which payment may be made in whole or in part under Medicare or a State health care program, and who are neither wholly-owned by the GPO nor subsidiaries of a parent corporation that wholly owns the GPO (either directly or through another wholly-owned entity).

(k) *Waiver of beneficiary coinsurance and deductible amounts.* As used in section 1128B of the Act, "remuneration" does not include any reduction or waiver of a Medicare or a State health care program beneficiary's obligation to pay coinsurance or deductible amounts as long as all of the standards are met within either of the following two categories of health care providers:

(1) If the coinsurance or deductible amounts are owed to a hospital for inpatient hospital services for which Medicare pays under the prospective payment system, the hospital must comply with all of the following three standards—

(i) The hospital must not later claim the amount reduced or waived as a bad debt for payment purposes under Medicare or otherwise shift the burden of the reduction or waiver onto Medicare, a State health care program, other payers, or individuals.

(ii) The hospital must offer to reduce or waive the coinsurance or deductible amounts without regard to the reason for admission, the length of stay of the beneficiary, or the diagnostic related group for which the claim for Medicare reimbursement is filed.

(iii) The hospital's offer to reduce or waive the coinsurance or deductible amounts must not be made as part of a price reduction agreement between a hospital and a third-party payor.

(2) If the coinsurance or deductible amounts are owed by an individual who qualifies for subsidized services under a provision of the Public Health Services Act or under titles V or XIX of the Act to a federally qualified health care center or other health care facility under any Public Health Services Act grant program or under title V of the Act, the health care center or facility may reduce or waive the coinsurance or deductible amounts for items or services for which payment may be made in whole or in part under part B of Medicare or a State health care program.

§ 1001.953 OIG report on compliance with investment interest safe harbor.

Within 180 days of the effective date of this subpart, the OIG will report to the Secretary on the compliance with §§ 1001.952(a)(2)(i) and 1001.952(a)(2)(vi).

Dated: July 19, 1991.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: July 22, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-17891 Filed 7-26-91; 8:45 am]

BILLING CODE 4150-04-M

federal register

Monday
July 29, 1991

Part IV

The President

Legislation

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

Presidential Documents

Title 3—

The President

Proclamation 6318 of July 25, 1991

National Juvenile Arthritis Awareness Week, 1991

By the President of the United States of America

A Proclamation

It is estimated that more than 250,000 children in the United States suffer from some form of arthritis. A chronic inflammatory disease of unknown cause, juvenile arthritis may attack the joints and major organs of the body, such as the heart, liver, spleen, and eyes. The disease, which can last a lifetime, often makes even simple tasks difficult and frustrating for its victims.

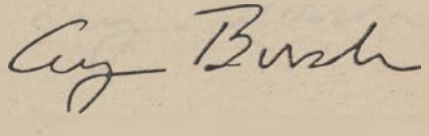
In addition to the physical pain and limitations that it imposes on its young victims, juvenile arthritis can inflict emotional and financial hardship on entire families. This week, as our Nation reaffirms its commitment to the fight against juvenile arthritis, we commend the courage of the children who cope with the disease from day to day. We also applaud the strength and the resourcefulness of their families in dealing with the disease.

Public awareness of juvenile arthritis and the importance of related scientific research is critical. Today the Federal Government and private voluntary organizations across the country are working together to educate Americans about juvenile arthritis while advancing studies of the disease. These cooperative efforts are evidence of our Nation's determination to conquer juvenile arthritis.

The Congress, by Senate Joint Resolution 142, has designated the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 28, 1991, as National Juvenile Arthritis Awareness Week. I urge all Americans—and, in particular, government agencies and health care organizations—to observe this week with appropriate programs and activities designed to promote public awareness of juvenile arthritis.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-18078
Filed 7-26-91; 10:40 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12771 of July 25, 1991

Revoking Earlier Orders With Respect to Kuwait

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 301 of title 3 of the United States Code, and the United Nations Participation Act (22 U.S.C. 287c),

I, GEORGE BUSH, President of the United States of America, find that the expulsion from Kuwait of Iraq's occupation forces, the restoration of Kuwait to its citizens, and the reinstatement of the lawful Government of Kuwait eliminate the need for Executive Order No. 12723 of August 2, 1990, entitled "Blocking Kuwaiti Government Property," and Executive Order No. 12725 of August 9, 1990, entitled "Blocking Kuwaiti Government Property and Prohibiting Transactions With Kuwait." Those orders were issued to protect the assets of the Government of Kuwait which were subject to United States jurisdiction, and to prevent the transfer of benefits by United States persons to Iraq based upon its invasion of Kuwait. Those orders also implemented the foreign policy and protected the national security of the United States, in conformity with applicable resolutions of the United Nations Security Council. Finding continuation of these orders unnecessary, I hereby order:

Section 1. Executive Order No. 12723 and Executive Order No. 12725 are hereby revoked. This revocation shall not affect the national emergency declared in Executive Order No. 12722 to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the policies and action of the Government of Iraq.

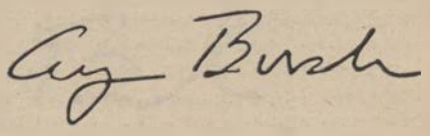
Sec. 2. This revocation shall not affect:

(a) any action taken or proceeding pending and not finally concluded or determined on the effective date of this order;

(b) any action or proceeding based on any act committed prior to the effective date of this order; or

(c) any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

Sec. 3. This order shall take effect immediately.



THE WHITE HOUSE,
July 25, 1991.

[FR Doc. 91-18079
Filed 7-26-91; 10:41 am]
Billing code 3195-01-M

NOTICE

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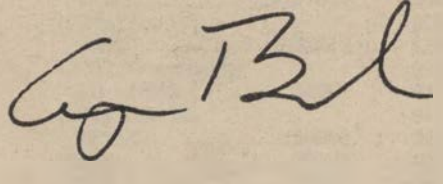
CONTINUATION OF IRAQI EMERGENCY

On August 2, 1990, by Executive Order No. 12722, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2 and 12724 of August 9, 1990, I imposed trade sanctions on Iraq and blocked Iraqi government assets. Similar sanctions were imposed against occupied Kuwait by Executive Orders Nos. 12723 and 12725 of August 2 and August 9, 1990, respectively, which were terminated by Executive Order No. 12771 of July 25, 1991. Because the Government of Iraq has continued its activities hostile to U.S. interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1991. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,

July 26, 1991.

[FR Doc. 91-18145
Filed 7-25-91; 2:09 pm]
Billing code 3195-01-C

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Monday, July 29, 1991

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.J. Res. 255/Pub. L. 102-72

Designating the week beginning July 21, 1991, as the "Korean War Veterans Remembrance Week". (July 23, 1991; 105 Stat. 331; 2 pages) Price: $1.00

Last List July 15, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	14.00	[1] Jan. 1, 1991
4	15.00	Jan. 1, 1991
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[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1 1984 containing those chapters.

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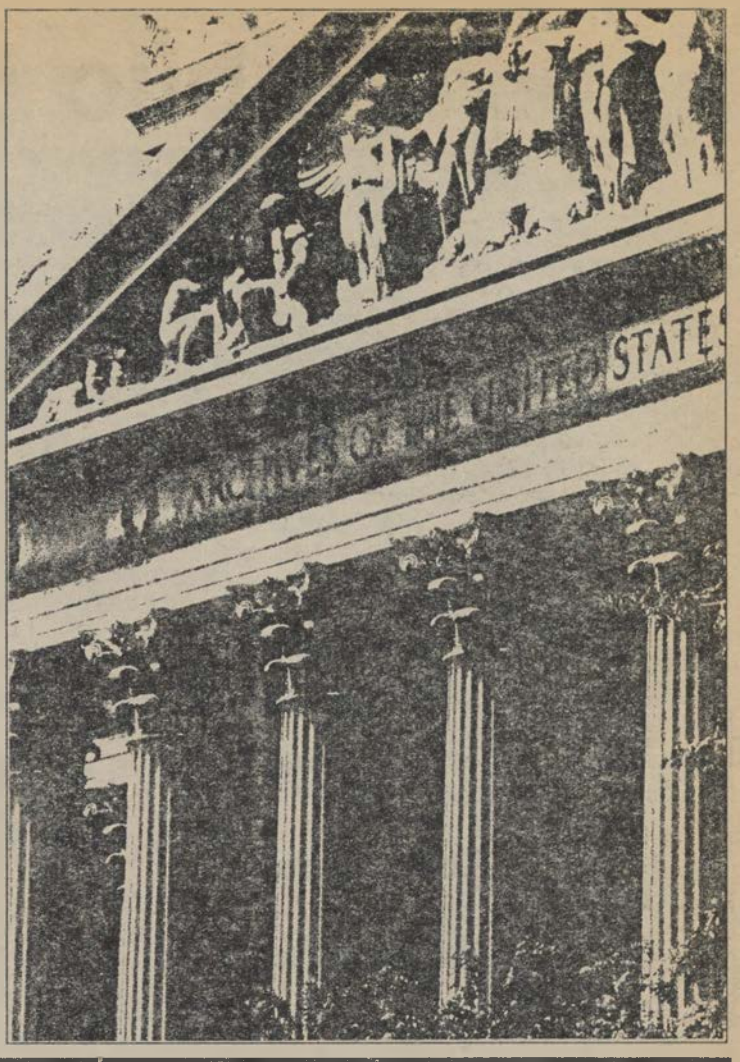

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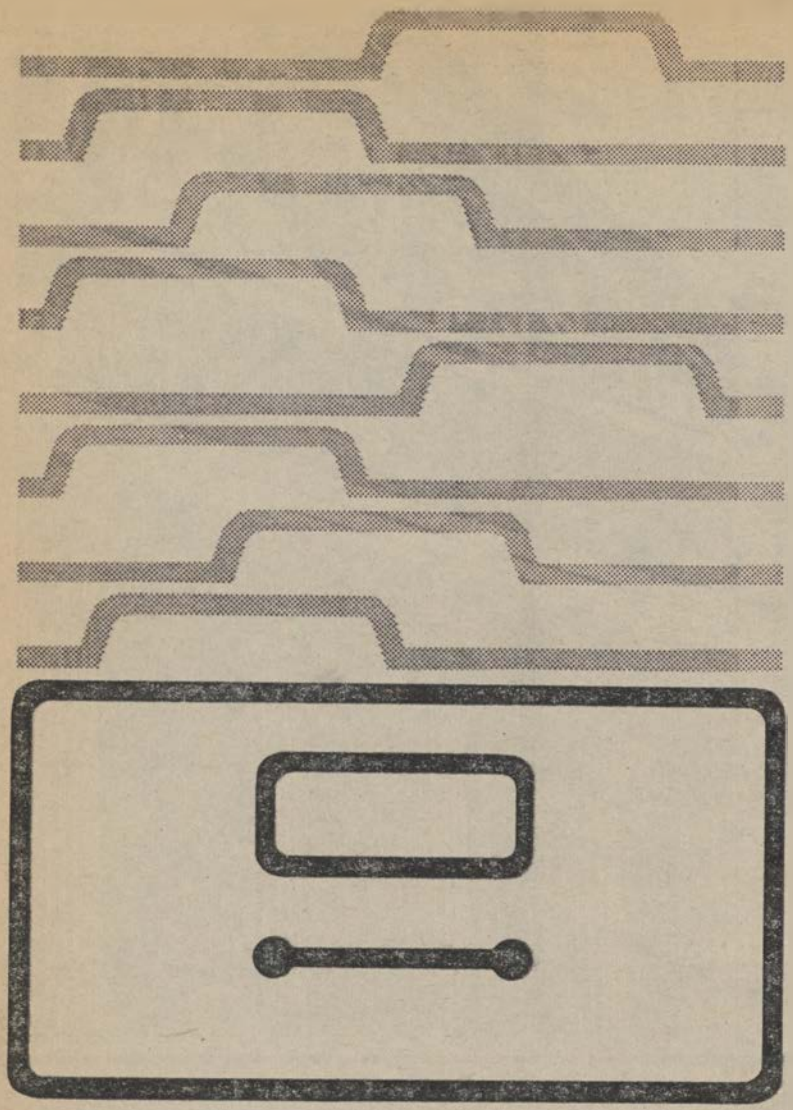

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